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REPORT
of
THE COMMISSION FOR THE
STUDY OF THE LOCAL AND
AD VALOREM TAX STRUCTURE
of the
STATE
of
NORTH CAROLINA



Raleigh, North Carolina
1970

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INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA



STATE OF NORTH CAROLINA

The Commission for

The Study of the Local and Ad Valorem Tax Structure

671 REVENUE BUILDING, RALEIGH, NORTH CAROLINA 27602

December 8, 1970

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SECRETARY

D. R. HOLBROOK

To His Excellency, Robert W. Scott
Governor of North Carolina

Dear Governor Scott:

Transmitted herewith is the report of the findings, conclusions and recommendations of the Commission for the Study of the Local and Ad Valorem Tax Structure of North Carolina.

The work of the Commission was performed in accordance with the requirements of Resolution No. 92 of the General Assembly of 1969 which authorized the appointment of the Commission.

Respectfully submitted,

A handwritten signature in cursive script, reading "David W. Bumgardner, Jr.", written in dark ink.

David W. Bumgardner, Jr.
Chairman

REPORT OF THE COMMISSION FOR THE STUDY OF
THE LOCAL AND AD VALOREM TAX STRUCTURE
TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF 1971

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NORTH CAROLINA
GENERAL ASSEMBLY
1969 SESSION
RATIFIED RESOLUTION
RESOLUTION 92
SENATE JOINT RESOLUTION 789

A JOINT RESOLUTION CREATING A COMMISSION FOR THE STUDY OF THE LOCAL AND
AD VALOREM TAX STRUCTURE OF THE STATE OF NORTH CAROLINA TO MAKE RECOM-
MENDATIONS TO THE GOVERNOR AND THE 1971 GENERAL ASSEMBLY.

WHEREAS, it is desirable that the tax structure of the local
governing units of the State of North Carolina should be studied and reviewed
to ascertain whether it meets the tests of stability and equity, whether it
is being administered efficiently and effectively and whether it makes
adequate provision for the sound and essential purposes of local government;
Now, therefore, be it resolved by the Senate, the House of Representatives
concurring:

Section 1. There is hereby created a Commission for the Study of
the Local and Ad Valorem Tax Structure of the State to be composed of nine
members and who shall be appointed as follows: three members shall be appointed
by the Governor, three members shall be appointed by the President of the Senate
and three members shall be appointed by the Speaker of the House.

Sec. 2. It shall be the duty of the Commission to study and review
the tax laws of the State, relating to local taxation, and to recommend such



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changes as it may deem advisable to the ends that the local revenue system may be as productive as possible consistent with equity, stability and efficient administration; that it may be fair when compared with the local tax systems of other states and when compared with other parts of the tax structure of this State; and that it may not place an undue hindrance to the location or expansion of business in the State.

Sec. 3. Upon its appointment, the Commission shall organize by electing from its membership a chairman and a vice chairman. The Administrative Officer of the State Board of Assessment shall serve as secretary to the Commission, but shall not be a member. The Commission is authorized, with the approval of the Governor, to employ such clerical and other assistants, professional advice and services as may be deemed necessary in the performance of its duties.

Sec. 4. The members of the Commission shall be paid such per diem and travel expenses as are provided for members of State boards and commissions generally. The expenses of the Commission shall be paid from the Contingency and Emergency Fund; provided, however, that total of such expenses of the Commission shall not exceed the sum of thirty thousand dollars (\$30,000).

Sec. 5. The State Board of Assessment, The Commissioner of Revenue, the Director of Tax Research and all local taxing officials shall make themselves and their staffs available to the Commission.

Sec. 6. The Commission shall submit its report by October 1, 1970, to the Governor for transmittal to the Advisory Budget Commission and the 1971 General Assembly.

Sec. 7. This Resolution shall become effective upon its adoption.

In the General Assembly read three times and ratified, this the
25th day of June, 1969.

H. P. Taylor, Jr.
President of the Senate.

Earl W. Vaughn
Speaker of the House of Representatives.

MEMBERS OF THE COMMISSION

Appointed by Governor Robert W. Scott:

Maxton Bass
Newton Grove, North Carolina

Richard Lowder
Lexington, North Carolina

Marvin L. Speight, Jr., Vice-Chairman
Farmville, North Carolina

Appointed by Lieutenant Governor H. Patrick Taylor, Jr.:

Harry Bagnal
Winston-Salem, North Carolina

Edward F. Griffin
Louisburg, North Carolina

Clyde M. Norton
Old Fort, North Carolina

Appointed by Speaker Philip P. Godwin:

Ike F. Andrews
Siler City, North Carolina

David W. Bumgardner, Jr., Chairman
Belmont, North Carolina

W. T. Culpepper, Jr.
Elizabeth City, North Carolina

COMMISSION STAFF

Institute of Government

Henry W. Lewis
William A. Campbell

State Board of Assessment

D. R. Holbrook, **Secretary to the Commission**
W. R. Underhill
R. W. Ellis
E. C. Shugart

Consultant on Public Service Companies

Robert H. McSwain - Montgomery, Alabama

Clerical

Lucia S. Sloan

PART I

THE REPORT OF THE COMMISSION

To the Governor and the Members of the General Assembly of 1971:

The Commission for the Study of the Local and Ad Valorem Tax Structure was created by Joint Resolution No. 92 of the General Assembly of 1969.

Section 2 of the Resolution sets forth the duty of the Commission as follows:

"It shall be the duty of the Commission to study and review the tax laws of the State, relating to local taxation, and to recommend such changes as it may deem advisable to the ends that the local revenue system may be as productive as possible consistent with equity, stability and efficient administration; that it may be fair when compared with the local tax systems of other states and when compared with other parts of the tax structure of this State; and that it may not place an undue hindrance to the location or expansion of business in the State."

The Commission held its first meeting on January 6, 1970. Because of the requirement of an October 1, 1970 reporting date, the Commission recognized that it would have to meet regularly and frequently. Therefore, beginning with its meeting on January 14th and continuing through November, the Commission met, almost without exception, on the second and fourth Tuesdays of each month.

In its first several meetings, the Commission received a comprehensive review of the State's property tax laws and the problems involved in their administration from members of the staff of the Institute of Government and

of the State Board of Assessment. During this review, the Commission concluded that it could not properly deal with exemptions from the property tax since Joint Resolution No. 73 creating the State Tax Study Commission contained a specific charge to study this subject.

Following this review, the Commission held a series of public hearings at which all persons who expressed a desire to present their views to the Commission were given an opportunity to appear. The Commission also received a number of written suggestions from persons who did not ask to appear.

Among those making presentations, either individually or through their associations, were people directly involved in the administration of the property tax such as tax supervisors, tax collectors and county attorneys. There were also presentations by two organizations closely associated with the tax and vitally interested in its improvement --- The Association of County Commissioners and the League of Municipalities. Also appearing were representatives of private appraisal firms, industrial firms, public utility firms, farm organizations and senior citizens' organizations.

After the hearings, the Commission was divided into three subcommittees, each responsible for an in-depth study of one of the following: (1) Listing and assessing, (2) Collection and foreclosure, and (3) Appraisal of service companies. Each subcommittee held bi-monthly meetings in addition to those of the full Commission. The reports of the subcommittees were carefully considered by the full Commission and each proposal was either approved, modified or disapproved.

Although there were many different points of view expressed by the persons

appearing before the Commission and by the members of the Commission, there appeared to be fairly general agreement regarding a number of subjects frequently mentioned. Among those most often mentioned were the following.

1. The need for recodification of the Machinery Act --- primarily for purposes of clarification and logical arrangement --- but also to revise certain obsolete provisions to bring them into line with present day practices.

The Commission concluded that although the present Statute was basically sound in most of its essential provisions, the lack of clarity in some parts of the Statute and deficiencies in others gave rise to unequal treatment of taxpayers in different taxing jurisdictions.

2. The need for updating the public utilities section of the Statute and for central assessment of the rolling stock of motor carriers and the flight equipment of air carriers.

Two prior Study Commissions have recommended improvement in this area and the Commission concludes, along with the prior Commissions, that changes are urgently needed. The present Statute is completely out of line with current business practices and accepted appraisal principles.

3. The need for better trained tax assessors and for greater recognition by governing officials of the importance of qualified tax assessors. The greatest recognition of this need came from the assessors themselves.

The Commission is encouraged by the individual efforts of many assessors and those of their association to improve the quality of their work. The Commission believes, however, that substantial statewide improvement will not be attained until local units of government fully recognize the importance of properly trained assessment personnel. The Commission further believes that a well-staffed and adequately funded tax office will be essential in the future and that any investment in such a program will reap substantial dividends.

4. The need to provide greater opportunities for the training of tax assessors and their assistants and to provide standards for qualifying for assessors' positions.

Primarily through the efforts of the staff of the Institute of Government and the North Carolina Association of Assessing Officers, assessment personnel have had greater opportunities for training and improvement in the past two or three years than ever before. The Commission believes that these opportunities should be greatly expanded, should be required of all assessors and should be coordinated and funded through the State Board of Assessment. The Commission further believes that recognition of achievement in these courses should be demonstrated by increased compensation.

5. The need to provide an alternative method of collecting tax on motor vehicles.

There are two basic problems in this area -- one is the ever-increasing mobility of our population and the other is the lapse of time between the date property is required to be listed for taxation and the due date of the tax. Many people who own motor vehicles do not list them during the listing period. To assist them in discovering these unlisted vehicles, many counties purchase a list from the Department of Motor Vehicles. While the lists can be helpful to the counties, it is extremely costly and time-consuming to check them against county records and correspond with delinquent taxpayers. The problem is complicated by the fact that the lists often contain the names of people who do not live in the county for which the list is made. After the unlisted vehicles which can be traced to residents of the county as of January 1 have been listed, the problem of collection begins. Motor vehicles, like all other property, are required to be listed as of January 1 of each year. The tax is not due, however, until October 1 and may be paid without penalty or interest until February 1 of the following year. During the period between the listing date and the due date of the tax, many taxpayers have moved from the county. If the collector can trace a taxpayer to another North Carolina county, he may be able to collect the tax due through the collector of that county. This procedure has not always been entirely satisfactory, however. In cases where the taxpayer has moved outside the State or cannot be traced, the tax is lost.

According to the taxing officials, the actual loss from uncollected taxes on motor vehicles and the added cost of collecting the tax on those not listed during the listing period represents a problem of serious proportions.

The Commission considered the feasibility of an additional license tax to be collected by the Department of Motor Vehicles and the sale of a license by counties and cities. There were problems involved in both of these procedures that the Commission could not resolve in the time it had available.

6. Although this question is not the specific responsibility of this Commission, the Commission feels that the 1971 General Assembly should repeal the exemption from ad valorem tax the tangible personal property of state and national banks. Recent changes in the National Banking Code make it possible for local units to tax this property and the Commission believes that there is no real justification for its continued exemption.

The Commission's chief regret is that within the time allotted, it could not fully explore all of these and the many other serious problems involved in the administration of the property tax. It does believe, however, that the proposed recodification of the Machinery Act, which is a part of this report, can be a significant first step in the difficult and complicated task of developing a property tax program administered by trained professionals and respected by all.

RECOMMENDATIONS

The Commission makes the following recommendations:

I. The governing bodies of the several local taxing units of this State, exercising the legal authority they now have, should place stronger emphasis on the training, staffing and compensation of their respective tax departments in order that all property owners be treated equitably and that the revenues available to local governments from the property tax be fully realized.

Opportunities for an expanded training program for tax personnel should be coordinated through the State Board of Assessment and provision should be made to adequately fund the program.

II. The 1971 General Assembly should provide for the continuation of the work begun by this Commission through the enactment of legislation creating a successor commission to function in the 1971-73 biennium and report to the Governor and the 1973 General Assembly.

III. That Part II of this Report, being the Bill Embodying the Commission's Recommendations and Recodification of the Machinery Act, be enacted by the 1971 Session of the General Assembly.

The Commission believes that the recodification contains a number of significant improvements over the present statute. Among these are the following:

1. A clearer and more logical presentation of the duties and responsibilities of taxing officials and the duties and rights of taxpayers.

2. A complete rewrite of the Statutes dealing with public utility appraisal to (1) bring the law into accord with accepted appraisal principles, (2) provide for the allocation of the property values of such companies on the basis of current business practices, and (3) provide for appraisal by the State Board of Assessment of products pipeline companies, cable television companies and of the rolling stock of motor carriers and the flight equipment of air carriers.
3. The requirement that future county tax supervisors be certified by the State Board of Assessment as qualified to carry out the duties of the office.
4. A clarification of the fourth-year horizontal revaluation requirement.
5. A clarification of the discovery provisions of the statute.
6. Provision for the State Board of Assessment to develop and recommend guides and standards for appraising certain types of property.
7. Provision for the State Board of Assessment to hear appeals through hearing officers.
8. Provision to permit prompt appeal from the adoption of schedules of values by Boards of County Commissioners in revaluation years.
9. Substitute the taxpayer's affirmation for the present requirement of an administered oath. This follows the income tax procedure.
10. Provision for strict regulation of the listing of property by agents.
11. Advancement of the due date of the tax from the first Monday in October to September 1.

12. Increase the annual interest on delinquent taxes from 6% to 12%.
13. Rewrite the property tax garnishment procedure to conform with that used by the Department of Revenue.

PART II

BILL EMBODYING COMMISSION'S RECOMMENDATIONS AND RE-
CODIFICATION OF THE MACHINERY ACT

The Commission submits the following draft of a bill to rewrite and recodify Subchapter II of Chapter 105 of the General Statutes of North Carolina:

A BILL TO BE ENTITLED AN ACT TO BE KNOWN AS THE MACHINERY ACT OF 1971.

The General Assembly of North Carolina do enact:

Section 1. Subchapter II of Chapter 105 of the General Statutes of North Carolina (being §§ 105-271 through 105-395, inclusive) is hereby rewritten to read as follows:

SUBCHAPTER II. LISTING, APPRAISAL, AND
ASSESSMENT OF PROPERTY AND COLLECTION OF
TAXES ON PROPERTY.

Article 11.

Short Title, Purpose, and Definitions.

§ 105-271. Official title. -- This subchapter may be cited as the Machinery Act.

§ 105-272. Purpose of subchapter. -- The purpose of this subchapter (being §§ 105-271 through 105-395, inclusive) is to provide the machinery for the listing, appraisal, and assessment of property and the levy and collection of taxes on property by counties and municipalities. It is the intent of the General Assembly to make the provisions of this subchapter uniformly applicable throughout the State, and to assure this objective no local act to become effective on or after July 1, 1971, shall be construed to repeal or amend any section of this subchapter in whole or in part unless it shall expressly so provide by specific reference to the section to be repealed or amended. As used in this section, the term "local act" means any act of the General Assembly that applies to one or more counties by name, to one or more municipalities by name, or to all municipalities within one or more named counties.

§ 105-273. Definitions. -- When used in this subchapter (unless the context requires a different meaning):

- (1) "Abstract" means the document on which the property of a taxpayer is listed for ad valorem taxation and on which the appraised and assessed values of the property are recorded.
- (2) "Appraisal" means both the true value of property and the process by which true value is ascertained.
- (3) "Assessment" means both the tax value of property ascertained by applying the assessment ratio to the appraised value of property and the process by which the assessment is determined.
- (4) "Assessment ratio" means that percentage of the appraised value of property adopted for use in taxing property.
- (5) "Collector" or "tax collector" means any person charged with the duty of collecting taxes for a county or municipality.
- (6) "Corporation" includes nonprofit corporation and every type of organization having capital stock represented by shares.
- (7) "Document" includes book, paper, record, statement, account, map, plat, film, picture, tape, object, instrument, and any other thing conveying information.
- (8) "Intangible personal property" means patents, copyrights, secret processes, formulae, good will, trademarks, trade brands, franchises, stocks, bonds, cash, bank deposits, notes, evidences of debt, leasehold interests in exempted real property, bills and accounts receivable, and other like property.
- (9) "List" or "listing," when used as a noun, means abstract.
- (10) "List taker" means list taker and assessor.

- (11) "Municipal corporation" and "municipality" mean city, town, incorporated village, district, or other unit of local government by or for which ad valorem taxes are levied.
- (12) "Person" and "he" include any individual, trustee, executor, administrator, other fiduciary, corporation, unincorporated association, partnership, sole proprietorship, company, firm, or other legal entity.
- (13) "Real property," "real estate," "land," "tract," "parcel," and "lot" mean not only the land itself, but also buildings, structures, improvements, and permanent fixtures thereon, and all rights and privileges belonging or in anywise appertaining thereto.
- (14) "Tangible personal property" means all personal property that is not intangible and that is not permanently affixed to real property.
- (15) "Tax" and "taxes" include the principal amount of any tax, costs, penalties, and interest imposed upon property tax, dog license tax, and poll tax.
- (16) "Taxing unit" means a county or municipality authorized to levy ad valorem property taxes.
- (17) "Taxpayer" means any person whose property is subject to ad valorem property taxation by any county or municipality and any person who, under the terms of this subchapter, has a duty to list property for taxation.
- (18) "Valuation" means appraisal and assessment.

Article 12.

Property Subject to Taxation.

§ 105-274. Property subject to taxation. -- (a) All property, real and personal, within the jurisdiction of the State shall be subject to taxation unless it is:

- (1) Excluded from the tax base by a statute of statewide application enacted under the classification power accorded the General Assembly by Article V, § 3, of the North Carolina Constitution, or
- (2) Exempted from taxation by the Constitution or by a statute of statewide application enacted under the authority granted the General Assembly by Article V, § 5, of the North Carolina Constitution.

(b) No provision of this subchapter shall be construed to exempt from taxation any property situated in this State belonging to any foreign corporation unless the context of the provision clearly indicates a legislative intent to grant such an exemption.

§ 105-275. Property classified and excluded from the tax base. -- The following classes of property are hereby designated special classes under authority of Article V, § 3, of the North Carolina Constitution and shall not be listed, appraised, or assessed for taxation:

- (1) Cotton, tobacco, other farm products, goods, wares, and merchandise held or stored for shipment to any foreign country, except any such products, goods, wares, and merchandise that have been so stored for more than twelve months on the date as of which property is listed for taxation. (The purpose of this classification is to encourage the development of the ports of North Carolina.)
- (2) Cotton, tobacco, other farm products, goods, wares, and merchandise held or stored at a seaport terminal awaiting further shipment after being imported from a foreign country through any seaport terminal in North Carolina, except such products, goods, wares, and merchandise that have been so stored for more than twelve months on the date as of which property is listed for taxation. (The purpose of this classification is to encourage the development of the ports of North Carolina.)
- (3) Personal property of nonresidents of the State in its original package or fungible goods in bulk, belonging to a nonresident of the State, shipped into this State and placed in a public warehouse for the purpose of transshipment to an out-of-State or within-the-State destination, and so designated on the original bill of lading, so long as such personal property remains in its original package or, if fungible, in bulk, and

in such a public warehouse. No portion of a premises owned or leased by a consignor or consignee, or subsidiary of a consignor or consignee, shall be deemed to be a public warehouse within the meaning of this subdivision despite any licensing as such. (The purpose of this classification is to encourage the development of the State of North Carolina as a distribution center.)

- (4) Personal property of residents of the State in its original package and fungible goods in bulk, belonging to a resident of the State, placed in a public warehouse for the purpose of transshipment to an out-of-State destination, and so designated on the original bill of lading, so long as such personal property remains in its original package or, if fungible, in bulk, and in such a public warehouse. No portion of a premises owned or leased by a consignor or consignee, or subsidiary of a consignor or consignee, shall be deemed to be a public warehouse within the meaning of this subdivision despite any licensing as such. (The purpose of this classification is to encourage the development of the State of North Carolina as a distribution center.)

§ 105-276. Taxation of intangible personal property. -- The classes of intangible personal property that, under the authority of Article V, § 3, of the North Carolina Constitution, have been classified for taxation under the provisions of Schedule H, §§ 105-198 through 105-217, are excluded from the tax base of counties and municipal corporations. Thus, the provisions of this subchapter concerning listing, appraisal, assessment, and taxation of real and personal property shall not be construed to apply to the classes of intangible personal property taxed under Schedule H, §§ 105-198 through 105-217. The listing, appraisal, assessment, and taxation of intangible personal property not specifically excluded from the local tax base by Schedule H, §§ 105-198 through 105-217, shall be governed by the provisions of this subchapter.

§ 105-277. Property classified for taxation at reduced rate. -- (a) Agricultural Products in Storage. Any agricultural product held in North Carolina by any manufacturer or processor for manufacturing or processing, which agricultural product is of such nature as customarily to require storage and processing for periods of more than one year in order to age or condition such product for manufacture, is hereby classified as a special class of property under authority of § 3, Article V of the Constitution. Such agricultural products so classified shall be taxed uniformly as a class in each local taxing unit at sixty per cent (60%) of the rate levied for all purposes upon real estate and other tangible personal property by said taxing unit in which such agricultural product is listed for taxation.

(b) Peanuts; Year Following Year in which Grown. Peanuts held in North Carolina in the year following the year in which such peanuts are grown are hereby classified as a special class of property under authority of § 3, Article V of the Constitution. Such peanuts so classified shall be taxed uniformly as a class in each local taxing unit at twenty per cent (20%) of the rate levied for all purposes upon real estate and other tangible personal property by said taxing unit in which such peanuts are listed for taxation.

(c) Baled Cotton for Manufacture or Processing in State. Cotton in bales held for manufacture or processing in North Carolina is hereby classified as a special class of property under authority of § 3, Article V of the Constitution. Such cotton so classified shall be taxed uniformly as a class in each local taxing unit at fifty per cent (50%) of the rate levied for all purposes upon real estate and other tangible personal property by said taxing unit in which such cotton is listed for taxation. This classification shall not be held to repeal any other classification or exemption granted to cotton under any existing law of State-wide application.

(d) Individual Family Fallout Shelters. Individual family fallout shelters meeting the criteria and standards of the Office of Civil Defense, United States Department of Defense, when constructed to protect an individual family from radioactive fallout, are hereby classified as a special class of property under authority of § 3, Article V of the Constitution. Such fallout shelters shall be subject to taxation in each local taxing unit only to the extent that the appraised value of such shelter, separate and apart from any structure to which the shelter is attached or within which the shelter is constructed, exceeds two thousand dollars (\$2,000.00). Where two or more families join in the construction of such a shelter for their common use, an exclusion of two thousand dollars (\$2,000.00) shall be allowed from the total appraised value for each such family.

§ 105-278. Real property exempt. -- The following real property, and no other, shall be exempted from taxation:

- (1) Real property owned by the United States or this State, and real property owned by the State for the benefit of any general or special fund of the State, and real property lawfully owned and held by counties, cities, townships, rural fire protection districts, or school districts, used wholly and exclusively for public or school purposes. The repeal of the exemption of real property indirectly owned by federal, State, or local governments shall be effective for the tax year 1943, and such property indirectly owned shall be placed upon the tax books for 1943 and subject to the tax rates levied on real estate in the year 1943.
- (2) Real property, tombs, vaults and mausoleums set apart for burial purposes, except such as are owned and held for purposes of sale or rental.
- (3) Buildings, with the land upon which they are situated, lawfully owned and held by churches or religious bodies, wholly and exclusively used for religious worship or for the residence of the minister of any such church or religious body or occupied gratuitously by one other than the owner which if it were the owner, would qualify for the exemption under this section, together with the additional adjacent land reasonably necessary for the convenient use of any such building.
- (4) Buildings, with the land occupied, wholly devoted to educational purposes, belonging to and exclusively occupied and used by public libraries, museums, colleges, academies, industrial schools, seminaries, and any other institutions of learning,

together with such additional land owned by such libraries and educational institutions as may be reasonably necessary for the convenient use of such buildings, and also such other buildings and facilities located on the premises of such institutions as may be reasonably necessary and useful in the functional operation of such institutions: Provided, however, that the exemption of this subdivision shall not apply to any institution organized or operated for profit, or if any officer, shareholder, member, or employee thereof or other individual shall be entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services.

- (4a) Real property owned by religious educational assemblies, retreats and similar organizations, associations and corporations, including (without limitation) assembly grounds, buildings used for meetings, conferences, religious book stores, study or worship, facilities used for lodging or eating, recreational facilities and areas, and adjacent lands and facilities reasonably necessary for the convenient use of such buildings and facilities, exclusively maintained and used for the religious education, housing, feeding and recreation of the officers, employees, instructors, students, conferees and other participants in the religious educational schools, institutes, seminars, conferences, and activities sponsored or conducted by any such religious educational organization, association or corporation for the purpose of providing religious education and development of the students, conferees

and other participants: Provided, however, that the exemption of this subdivision shall not apply to any assembly or other similar organization organized or operated for profit, or if any officer, shareholder, member, or employee thereof or other individual shall be entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services. Any such building or facility shall be deemed to be exclusively maintained and used for the exempt purposes herein defined, whether operated through the employees of the exempt assembly or similar organization or through a contractual arrangement, notwithstanding the fact that the building or facility is incidentally available to and patronized by the general public so long as there is no material amount of business or patronage with the general public.

- (5) Real property belonging to, actually and exclusively occupied by Young Men's Christian Associations and other similar religious associations, orphanages, or other similar homes, hospitals and nunneries not conducted for profit, but entirely and completely as charitable.
- (6) Buildings, with the land actually occupied, belonging to the American Legion or Post of the American Legion, or any other veterans' organization chartered by Congress or organized and operated on a State-wide or nation-wide basis, or any post or other local organization thereof, or any benevolent, patriotic, historical, or charitable association used exclusively for lodge purposes by said societies or associations,

together with such additional adjacent land as may be necessary for the convenient use of the buildings thereon.

- (7) The exemptions granted in subdivisions (3), (4), (4a), (5), (6) and (10) of this section shall apply to real property of foreign religious, charitable, educational, literary, benevolent, patriotic or historical corporations, institutions or orders when such property is exclusively used for religious, charitable, educational or benevolent purposes within this State.
- (8) The real property of Indians who are not citizens, except lands held by them by purchase.
- (9) Real property falling within the provisions of § 55A-16, appropriated exclusively for public parks and drives.
- (10) Real property actually used for hospital purposes, including homes for nurses employed by or in training in such hospitals, held for or owned by hospitals organized and operated as nonstock, nonprofit, charitable institutions, without profit to the members or their successors, notwithstanding that patients able to pay are charged for services rendered: Provided, all revenues or receipts of such hospitals shall be used, invested, or held for the purposes for which they are organized; and provided, further, that where hospital property is used partly for such hospital purposes and partly rented out for commercial and business purposes, then only such proportion of the value of such building and the land on which it is located shall be exempt from taxation as is actually used for such hospital pur-

poses. The provisions of this section shall be effective as to taxes for the year one thousand nine hundred and thirty-six and subsequent years.

- (11) Real property, or so much thereof, which is used exclusively for air cleaning or waste disposal or air or water pollution abatement facilities, including waste lagoons, designed to abate, reduce, or prevent pollution of air or water. This exemption is allowed only upon the condition that a certificate is furnished to the tax supervisor of the county, wherein such property is located, by the Board of Water and Air Resources, certifying that said Board has found as a fact that the air cleaning device or the waste treatment plant, including waste lagoons, or pollution abatement equipment above described has been constructed or installed thereon and that such plant, device or equipment complies with the requirements of said Board with respect to such plants, devices or equipment, that such plant, device or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Board of Water and Air Resources, and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The exemption provided in this section shall apply to the facilities or equipment of private or public utilities built and installed primarily for the purpose of providing sewer service to residential

and outlying areas. The exemption herein provided for shall be applicable only with respect to taxes levied in 1955 and subsequent years.

- (12) Buildings with the land upon which they are situated, together with the additional adjacent land reasonably necessary for the convenient use of such buildings, lawfully owned and held by churches or other religious bodies or organizations, and used for the general or promotional offices or headquarters of such churches or religious bodies or organizations.
- (13) Real property owned by any airport authority, airport board or airport commission created as a separate and independent body corporate and politic by an act of the General Assembly or by counties or municipalities pursuant to an act of the General Assembly.
- (14) Notwithstanding any of the other provisions of this section, when any building and additional adjacent land necessary for the convenient use of said building belongs to an organization enumerated in subdivisions (3) through (7) or (10) or (12) of this section and a part thereof is devoted to the purposes for which an exemption from ad valorem taxes would be allowed by said subdivisions if the entire building and grounds were exclusively used for such purposes, then such property shall be exempt from ad valorem taxes to the extent of that pro rata part so used.

§ 105-279. Timberland owned by State. -- (a) Any State department or agency owning timberland or leasing, controlling or administering timberland owned by the State, shall pay to each county in which said timberland is situated an amount equal to fifteen percent of proceeds of the gross sales of trees, timber, pulpwood, and any forest products from said timberland, and said funds shall, when received, be placed in the account of the county general fund. Where the said timberland consists of a tract situated in more than one county and the timber, trees, pulpwood, or forest products are sold, or cut, removed and sold from the entire tract, then the percentage of gross sales as herein prescribed shall be divided and paid to said county boards on the basis of the acreage located in the respective counties.

(b) Any other organization (corporation, trust, foundation, association or other entity) owning timberland which is organized and operated exclusively to receive, hold, invest and administer property and to make expenditures to or for the sole benefit of an educational institution shall in lieu of paying the county taxes otherwise assessed against such timberland, make the payments prescribed in subsection (a) above or ten cents (10¢) per acre per year, whichever is greater.

(c) This section shall not apply to the proceeds of sale of trees, timber, pulpwood, or forest products directly paid to or received by the State Board of Education, or any other State educational institution, or the North Carolina Department of Agriculture from its research stations and experimental farmlands: Provided, that where State forests are held, leased, or administered by the Department of Correction, or as held, leased or administered by the Department of Conservation and Development as provided by § 113-34, or by the Wildlife Resources Commission, said departments, instead of payment as above prescribed, may elect permanently to subject such State forests to county taxes assessed on the same basis as are private lands, and pay said taxes from the proceeds of

revenue received and collected by said departments to the board of county commissioners of the county in which said forest is situated, but all fire towers, buildings and all other permanent improvements shall be exempt from assessment. Provided that the provisions of this section shall not apply to lands under the control of the Hospitals Board of Control.

§ 105-280. Personal property exempt. -- The following personal property, and no other, shall be exempt from taxation:

- (1) Personal property, directly or indirectly owned by this State and by the United States, and that lawfully owned and held by the counties, cities, towns, rural fire protection districts, and school districts of the State, used wholly and exclusively for county, city, town, fire protection district, or public school purposes.
- (2) The furniture and furnishings of buildings lawfully owned and held by churches or religious bodies, wholly and exclusively used for religious worship or for the residence of the minister of any church or religious body, and private libraries of such ministers and the teachers of the public schools of this State.
- (3) The furniture, furnishings, books, and instruments contained in buildings wholly devoted to educational purposes, belonging to and exclusively used by churches, public libraries, colleges, academies, industrial schools, seminaries, or other institutions.
- (3a) Personal property owned by religious educational assemblies, retreats and similar organizations, associations and corporations exclusively maintained and used in connection with buildings, facilities and areas exempt from taxation under the provisions of § 105-278, subdivision (4a).
- (4) The endowment and invested funds of churches and other religious associations, charitable, educational, literary, benevolent, patriotic or historical institutions, associations

or orders, when the interest or income from said funds shall be used wholly and exclusively for religious, charitable, educational or benevolent purposes, or to pay the principal or interest of the indebtedness of said associations.

- (5) Personal property belonging to Young Men's Christian Associations and other similar religious associations, orphan and other similar homes, reformatories, hospitals, and nunneries which are not conducted for profit and entirely and completely used for charitable and benevolent purposes.
- (6) The furniture, furnishings, and other personal property belonging to the American Legion, or any post thereof, or any other veterans' organization chartered by Congress or organized and operating on a nation-wide or State-wide basis, or any post or other local organization thereof, or any patriotic, historical, or any benevolent or charitable association, when used wholly for lodge or post purposes and meeting rooms by said association or when such personal property is used for charitable or benevolent purposes.
- (7) The exemptions granted in subdivisions (2), (3), (4), (5), (6) and (11) of this section shall apply to personal property of foreign religious, charitable, educational, literary, benevolent, patriotic or historical corporations, institutions or orders when such property is exclusively used or the income therefrom is exclusively used for religious, charitable, educational or benevolent purposes within this State.

- (8) Wearing apparel, household and kitchen furniture, the mechanical and agricultural instruments of farmers and mechanics, libraries and scientific instruments, provisions and livestock, not exceeding the total value of three hundred dollars (\$300.00), and all growing crops: Provided, that said three hundred dollars (\$300.00) exemption shall be limited to:
- a. Each household, consisting of the head of the household and all the dependents, one three hundred dollars (\$300.00) exemption to be distributed among the members of the household as they see fit; and
 - b. Each single person, not residing with persons on whom he is dependent, as to eligible property actually owned by him.
- (9) The intangible personal property referred to in Schedule H, §§ 105-198 to 105-217, which said intangible personal property shall be taxed or exempt in accordance with the provisions of said Schedule H, §§ 105-198 to 105-217: Provided, that the provisions of this subsection shall not be construed to modify the provisions of Article 23 of this subchapter.
- (10) Repealed by Session Laws 1961, c. 1169, s.8.
- (11) The furniture, furnishings, books, instruments, and all other tangible or intangible personal property held for or owned by hospitals organized and operated as nonstock, nonprofit, charitable institutions, notwithstanding that patients of such hospitals able to pay are charged for services rendered: Provided,

all revenues or receipts of such hospitals shall be used, invested, or held for the purposes for which they are organized. The provisions of this section shall be effective as to any assessment for taxes for the year one thousand nine hundred and thirty-six and subsequent years.

- (12) All cotton, tobacco or other farm products owned by the original producer, or held by the original producer in any public warehouse and represented by warehouse receipts, or held by the original producer for any co-operative marketing or grower's association, shall be exempt from taxation for the year following the year in which grown, but not for any year thereafter.
- (13) Any vehicle given by the federal government to any veteran on account of any disability suffered during World War II, so long as such vehicle is owned by the original donee or other veteran entitled to receive such gift under Title 38, section 252, United States Code Annotated.
- (14) Personal property owned by any airport authority, airport board or airport commission created as a separate and independent body corporate and politic by act of the General Assembly or by counties and/or municipalities pursuant to an act of the General Assembly.
- (15) All cotton while subject to transit privileges under Interstate Commerce Commission tariffs.
- (16) Air cleaning devices, sewage and waste treatment facilities, and air or water pollution abatement equipment designated to abate, reduce, or eliminate air or water pollution. This exemption shall be allowed only upon the condition that a

certificate is furnished to the tax supervisor of the county, wherein such property is located, by the Board of Water and Air Resources, certifying that said Board has found as a fact that the air cleaning device or waste treatment plant or pollution abatement equipment purchased or constructed or installed as above described has actually been constructed and installed and that such plant or equipment complies with the requirements of said Board with respect to such devices, plants, or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Board of Water and Air Resources, and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The exemption herein provided shall apply to facilities or equipment of private or public utilities built and installed primarily for the purpose of providing sewer service to residential and outlying areas. The exemption herein provided for shall be applicable only with respect to taxes levied in 1955 and subsequent years.

- (17) Repealed by Session Laws 1961, c. 1169, s.8.
- (18) Wheat grown in North Carolina and stored in an unmanufactured state, owned or held by one other than a processor of wheat, upon which there is money borrowed and said money borrowed being secured by a mortgage on said wheat, shall be exempt for the year following the year in which grown.

§ 105-281. Deductions and credits. -- (a) Private hospitals shall not be exempt from property taxes and other taxes lawfully imposed, but in consideration of the large amount of charity work done by them, the boards of commissioners of the several counties are authorized and directed to accept, as valid claims against the county, the bills of such hospitals for attention and services voluntarily rendered to afflicted or injured residents of the county who are indigent and likely to become public charges, when such bills are duly itemized and sworn to and are approved by the county physician or health officer as necessary or proper; and the same shall be allowed as payments on and credits against all taxes which may be or become due by such hospital on properties strictly used for hospital purposes, but to that extent only will the county be liable for such hospital bills: Provided, that the board of aldermen or other governing boards of cities and towns shall allow similar bills against the municipal taxes for attention and services voluntarily rendered by such hospitals to paupers or other indigent persons resident in any such city or town: Provided further, that the governing boards of cities and towns shall require a sworn statement to the effect that such bills have not and will not be presented to any board of county commissioners as a debt against that county, or as a credit on taxes due that county. The provisions of this subsection shall not apply to public hospitals or to hospitals organized and operated as nonstock, nonprofit, charitable institutions, which, for the purposes of this subchapter, shall be deemed public hospitals: Provided, however, that nothing in this subsection shall affect the liability of counties, cities, and towns to public hospitals, as herein defined, for services heretofore or hereafter rendered indigent patients or public charges and for which such counties, cities, or towns are or may be otherwise liable.

(b) All bona fide indebtedness incurred in the purchase of fertilizer and fertilizer materials owing by a taxpayer as principal debtor may be deducted from the total value of all fertilizer and fertilizer materials as are held by such

taxpayer for his own use in agriculture during the current year: Provided, further, that from the total value of cotton stored in this State there may be deducted by the owner thereof all bona fide indebtedness incurred directly for the purchase of said cotton and for the payment of which the cotton so purchased is pledged as collateral.

(c) For the purpose of ascertaining and fixing the tax value of any cotton, tobacco, or other farm products, held by or for any co-operative stabilization or marketing association or corporation, to whom the products have been delivered or conveyed or assigned by the original producer for the purpose of sale, there shall be deducted (by any person or corporation liable for the tax thereon) from the determined value of the commodity the amount of any unpaid loan or loans and/or advance or advances of any nature whatsoever made or granted thereon by the United States government or by any agency of the United States government or by any co-operative stabilization or marketing association or corporation.

§ 105-282. Records of tax exempt property. -- The person making up the tax records shall enter, in regular order, the name of the owner, a clear description of all real and personal property exempt from taxation, together with a statement of its value, for what purpose used, and the rent, if any, obtained therefrom. Each list taker shall secure the necessary information with respect to such property in his township. The county supervisor of taxation, when the list of exempt property is completed, shall make duplicate copies thereof and transmit a duplicate copy to the State Board of Assessment on or before November 1 of each year and shall file the original list in his office.

Article 13.

Standards for Appraisal and Assessment.

§ 105-283. Uniform appraisal standard. -- All property, real and personal, shall as far as practicable be appraised or valued at its true value in money. (The intent of this section is to have all property appraised at its true and actual value in money, in such manner as such property is usually sold, but not by forced sale.) Thus, when used in this subchapter, the words "true value" shall be interpreted as meaning market value, that is, the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used.

§ 105- 284. Uniform assessment standard; selection of assessment ratio. -- (a) Each year prior to the first meeting of the board of equalization and review, the board of county commissioners shall adopt by resolution some uniform percentage of the amount at which property in the county has been appraised as the value to be used in taxing property. This percentage shall be known as the assessment ratio.

(b) Before adopting the resolution required by subdivision (a), the board of county commissioners shall give representatives of municipalities required to use the assessments determined by the county an opportunity to make recommendations as to that assessment ratio that would provide a reasonable and adequate tax base in each such municipality. The board of county commissioners shall give due consideration to the recommendations of such representatives, but final action selecting and adopting the assessment ratio shall be taken by the board alone.

(c) Within ten days after adopting an assessment ratio, the board of county commissioners shall forward a certified copy of the adoption resolution to the State Board of Assessment.

(d) The assessment ratio selected by the board of county commissioners shall be applied to the appraised value of all real and personal property subject to taxation in the county, and the abstracts or tax records of the county shall show for all properties both the appraisal value and the assessed value for tax purposes.

(e) Taxes levied by all counties and municipalities shall be levied uniformly on assessments determined as provided in this section.

Article 14.

Time for Listing and Appraising Property for Taxation.

§ 105-285. Date as of which property is to be listed and appraised. --

(a) All property subject to ad valorem taxation shall be listed annually.

(b) The value and ownership of personal property, both tangible and intangible, shall be determined annually as of January 1.

(c) The value of real property shall be determined as of January 1 of the years prescribed by §§ 105-286 and 105-287. The ownership of real property shall be determined annually as of January 1, except in the following situation: When any real property is acquired after January 1, but prior to July 1, and the property was not subject to taxation on January 1 on account of its exempt status, it shall be listed for taxation by the transferee as of the date of acquisition and shall be appraised in accordance with its true value at that time; and the property shall be taxed for the fiscal year of the taxing unit beginning on July 1 of the year in which it is acquired. The person in whose name such property is listed shall have the right to appeal the listing, appraisal, and assessment of the property in the same manner as that provided for listings made as of January 1.

In the event real property exempt as of January 1 is, prior to July 1, acquired from a governmental unit that by contract is making payments in lieu of taxes to the taxing unit for the fiscal period beginning on July 1 of the year in which the property is acquired, the tax on such property for the fiscal period beginning on July 1 immediately following acquisition shall be one-half of the amount of the tax that would have been imposed if the property had been listed for taxation as of January 1.

§ 105-286. Time for general reappraisal of real property. -- (a) Octennial Plan. Unless the date shall be advanced as provided in subdivision (a)(2), below, each county of the State, as of January 1 of the year prescribed in the schedule set out in subdivision (a)(1), below, and every eighth year thereafter, shall re-appraise all real property in accordance with the provisions of §§ 105-283 and 105-317.

(1) Schedule of Initial Reappraisals.

Division One -- 1972: Avery, Camden, Cherokee, Cleveland, Cumberland, Guilford, Harnett, Haywood, Lee, Montgomery, Northampton, Robeson, and Transylvania.

Division Two -- 1973: Caldwell, Carteret, Columbus, Currituck, Davidson, Gaston, Greene, Hyde, Lenoir, Madison, Orange, Pamlico, Pitt, Richmond, Swain, and Washington.

Division Three -- 1974: Ashe, Buncombe, Chowan, Franklin, Henderson, Hoke, Jones, Pasquotank, Rowan, and Stokes.

Division Four -- 1975: Alleghany, Bladen, Brunswick, Cabarrus, Catawba, Dare, Halifax, Macon, New Hanover, Surry, Tyrrell, and Yadkin.

Division Five -- 1976: Bertie, Caswell, Forsyth, Iredell, Jackson, Lincoln, Onslow, Person, Perquimans, Rutherford, Union, Vance, Wake, Wilson, and Yancey.

Division Six -- 1977: Alamance, Durham, Edgecombe, Gates, Martin, Mitchell, Nash, Polk, Randolph, Stanly, Warren, and Wilkes.

Division Seven -- 1978: Alexander, Anson, Beaufort, Clay, Craven, Davie, Duplin, and Granville.

Division Eight -- 1979: Burke, Chatham, Graham, Hertford, Johnston, McDowell, Mecklenburg, Moore, Pender, Rockingham, Sampson, Scotland, Watauga, and Wayne.

(2) Advancing Scheduled Octennial Reappraisal. Any county desiring to conduct a reappraisal of real property earlier than required by this subdivision (a) may do so upon adoption by the board of county commissioners of a resolution so providing. A copy of any such resolution shall be forwarded promptly to the State Board of Assessment. If the scheduled date for reappraisal for any county is advanced as provided herein, real property in that county shall thereafter be reappraised every eighth year following the advanced date unless, in accordance with the provisions of this subdivision (a)(2), an earlier date shall be adopted by resolution of the board of county commissioners, in which event a new schedule of octennial reappraisals shall thereby be established for that county.

(b) Fourth-Year Horizontal Adjustments. As of January 1 of the fourth year following a reappraisal of real property conducted under the provisions of subdivision (a), above, each county shall review the appraised values of all real property and determine whether changes should be made to bring those values into line with then current true value. If it is determined that the appraised value of all real property or of defined types or categories of real property require such adjustment, the tax supervisor shall revise the values accordingly by horizontal adjustments rather than by actual appraisal of individual properties: that is, by uniform application of percentages of increase or reduction to the appraised values of properties within defined types or categories or within defined geographic areas of the county.

(c) Value to be Assigned Real Property when not Subject to Appraisal. In years in which real property within a county is not subject to appraisal or reappraisal under subdivisions (a) or (b), above, or under § 105-287, it shall be listed at the value assigned when last appraised under this section or under § 105-287.

§ 105-287. Real property to be appraised in years in which general re-appraisal is not conducted. -- (a) Real property described in subdivision (b), below, and no other shall be reappraised for taxation in years in which no general appraisal or reappraisal is being conducted in the county under the provisions of § 105-286(a). However, nothing in this section shall modify or restrict the provisions of § 105-312 governing the appraisal of discovered property. Reappraisals required by this section shall not be retroactive but shall take effect as of January 1 of the year in which made. The appeal provisions of §§ 105-322 and 105-324 shall apply to reappraisals made under the requirements of this section.

(b) All real property that meets the following requirements shall be reappraised in years in which no general appraisal or reappraisal is being conducted in the county, that is, real property which:

- (1) Was not appraised at the last general appraisal or reappraisal conducted in accordance with the provisions of § 105-286.
- (2) Has increased in value to the extent of more than one hundred dollars (\$100.00) by virtue of improvements or appurtenances added since the last appraisal or reappraisal of such property. (However, in no case shall the valuation of a property be increased as the result of the owner's enterprise in adopting any one or more of the following progressive policies:
 - a. Planting and care of lawns, shade trees, shrubs, and flowers for noncommercial purposes.
 - b. Repainting buildings.
 - c. Terracing or other methods of soil conservation, to the extent that they preserve values already existing.

- d. Protection of forests against fire.
- e. Planting of forest trees on vacant land for reforestation purposes (for ten years after such planting).
- f. The impoundment of water upon marshlands for the purpose of preserving or enhancing the natural habitat of wildlife indigenous to such marshlands, but only when the marshlands are used for noncommercial purposes.
- g. Installing or constructing air cleaning devices or waste disposal or water pollution abatement plants (including waste lagoons) or equipment, upon the condition that a certificate is furnished to the tax supervisor of the county in which such property is located by the Board of Water and Air Resources certifying that the Board has found as a fact:
 - 1. that the waste treatment plant, air cleaning device, or air or water pollution abatement equipment as above described has actually been constructed and installed, and
 - 2. that the plant, device, or equipment complies with the requirements of the Board with respect to such plants, devices, or equipment, and
 - 3. that the plant, device, or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the board, and
 - 4. that the primary rather than incidental purpose of the plant, device, or equipment is to reduce air or water

pollution resulting from the emission of air
contaminants or the discharge of sewage and waste.

The provisions of this subdivision (b)(2)g shall also apply
to the facilities or equipment of private or public utilities
built and installed primarily for the purpose of providing
sewer service to residential and outlying areas.

- (3) Has decreased in value to the extent of more than one hundred dollars (\$100.00) by virtue of damage, destruction, or removal of improvements or appurtenances (other than those listed in subdivision (b)(2), above) since the last appraisal or re-appraisal of such property.
- (4) Has been divided into lots that are located on streets laid out and open for travel and that have been sold or offered for sale as lots since the last appraisal of such property. (However, if a tract has been divided into lots and more than five acres of the tract remain unsold by the owner thereof, the unsold portion may be appraised as land acreage rather than as lots in the discretion of the tax supervisor.)
- (5) Was last appraised at an improper figure as the result of a clerical error.
- (6) Has increased or decreased in value to the extent of more than one hundred dollars (\$100.00) by virtue of circumstances external to the property other than increases or decreases in the general economy of the county since the last appraisal of such property. (In each such case the facts in connection with the increase or

decrease in value of the specific tract, parcel, or lot shall be found by the board of equalization and review and entered upon the proceedings of the board.)

- (7) Has increased or decreased in value by virtue of a change in the acreage or poundage allotment for any farm commodity, when any such allotment was assigned a fixed value per acre or other unit of measurement in the last appraisal of such property. (In such event the board of equalization and review shall adjust uniformly the appraised and assessed valuations of all real property affected by such a change in allotments.)
 - (8) Was last appraised at an improper figure as the result of an error in the number of acres in the tract or parcel or in the dimensions of the lot.
 - (9) Was last appraised at a figure that, when measured by the schedules of values, standards, and rules adopted under the provisions of § 105-317 for the county's last preceding general reappraisal, was manifestly unjust at the time so appraised.
- (c) In appraising real property under the provisions of this section, the schedules, standards, and rules that were adopted for use in the last preceding reappraisal of real property in the county conducted under § 105-286 shall be applied.

Article 15.

State Board of Assessment.

§ 105-288. Creation; functions; members and officers; oaths. -- (a) There is hereby created a State Board of Assessment.

- (1) The Board shall exercise general and specific supervision over the valuation and taxation of property by counties and municipalities throughout the State.
- (2) The Board is constituted a board of appraisers and assessors for the property of public service companies as defined in § 105-333.
- (3) The Board is constituted a State board of equalization and review of valuation and taxation of property in this State.

(b) The State Board of Assessment shall be composed of five members chosen as provided in subdivisions (b)(1) through (b)(5), below.

- (1) Members of the Board serving on the effective date of this act shall serve until their current terms expire and their successors are appointed and qualified.
- (2) On July 1, 1971, and quadrennially thereafter, the Governor, the Lieutenant Governor, and the Speaker of the North Carolina House of Representatives shall each appoint one member to serve for four years and until his successor is appointed and qualified.
- (3) On July 1, 1973, and quadrennially thereafter, the Governor shall appoint a member to fill the single term expiring on that date to serve for four years and until his successor is appointed and qualified.
- (4) The Director of the Department of Tax Research shall serve ex officio as a member of the Board.

(5) In the case of a vacancy, the unexpired term shall be filled by appointment by the holder of the office making the original appointment.

(c) The Board shall select its chairman from the membership of the Board. The chairman shall serve for a term of four years unless his membership on the Board shall expire earlier.

(d) On July 1, 1971, and quadrennially thereafter, the Board shall appoint an administrative officer whose entire time shall be given to the work of the Board and who shall have the powers and duties prescribed by this subchapter. The administrative officer shall serve at the pleasure of the Board.

(e) The members of the Board and the administrative officer shall take and subscribe the oaths prescribed in §§ 11-6 and 11-7 and the oath set out below and file them with the Secretary of State:

I do solemnly swear (or affirm) that I will faithfully discharge my duties as a member of the State Board of Assessment (or Administrative Officer of the State Board of Assessment): and that I will not allow my actions as a member (or Administrative Officer) of said Board to be influenced by personal or political friendships or obligations.

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(Signature)

(f) Upon authorization of the Board, the administrative officer may employ valuation and appraisal specialists and other assistants needed for the performance of the duties of the Board and of the administrative officer.

(g) The members of the Board shall receive fifteen dollars (\$15.00) per day when engaged in the performance of duties plus subsistence and travel expenses.

The administrative officer of the Board shall be paid a salary to be fixed by the Governor and the Advisory Budget Commission. All expenses of the Board, the administrative officer, and other employees of the Board shall be paid from funds appropriated out of revenues derived from the tax on intangible personal property as provided by § 105-213.

§ 105-289. Duties of the Board. -- (a) It shall be the duty of the State Board of Assessment:

- (1) To discharge the duties prescribed by law and to take such action and to do such things as may be needful and proper to enforce the provisions of this subchapter.
- (2) To report in reasonably durable form to the General Assembly at each regular session or at such other times as the General Assembly may direct:
 - a. The proceedings of the Board during the preceding biennium.
 - b. Recommendations concerning revision of this subchapter and information concerning the public revenues that may be required by the General Assembly or that the Board deems expedient and wise.
- (3) To report to the Governor on or before the first day of January each year:
 - a. The proceedings of the Board during the preceding year.
 - b. Any recommendations the Board desires to submit with respect to any matter relating to this subchapter.
- (4) To keep full and accurate records of its official proceedings.

(b) In its capacity as a board of appraisers and assessors, it shall be the duty of the Board to administer the provisions of Article 23 of this subchapter.

(c) In its capacity as a State board of equalization and review, it shall be the duty of the Board to administer the provisions of § 105-290.

(d) It shall be the duty of the Board to administer the duties prescribed by §§ 105-198 through 105-217 with respect to the division and certification of taxes on intangible personal property thereunder and to hear and pass upon

any matters relative thereto.

(e) In exercising general and specific supervision over the valuation and taxation of property, the Board shall provide for the instruction of county, city, and town tax authorities in the listing, appraisal, and assessment of property for taxation and in the levying and collection of property taxes. On and after July 1, 1973, boards of county commissioners and municipal governing bodies shall not appoint any person to the office of county or municipal tax supervisor unless and until the State Board of Assessment shall have certified that he has been instructed in the duties of the office and that he is qualified to appraise the kinds of real and personal property commonly found in this State.

(f) In accordance with regulations that may be adopted by the Board, the State Board of Assessment shall make available to county tax supervisors, boards of equalization and review, and boards of county commissioners any information contained in any report to the Board, information to which the Board may have access in any report to the Department of Revenue or other State department, or any other information that the Board may have in its possession that may assist the county authorities in securing a complete listing of property for taxation and in appraising taxable property.

(1) Information transmitted or made available to county tax authorities under this subdivision (f) shall not be divulged or published by the county tax authorities and shall be used only for the purposes of securing complete tax listings, appraising taxable property, and presenting information in administrative and judicial proceedings involving listings and appraisals.

(2) Except as provided in this subdivision (f), and except to the Governor or his authorized agent, and except to a solicitor or the authorized agent of a solicitor of a district in which such

information would affect the listing or appraisal of property for taxation, the Board shall not divulge or make public the reports made to it or to other State departments. (The provisions of this subdivision shall not interfere with the publication of appraisals, assessments, and decisions made by the Board or with publication of statistics by the Board, nor shall the provisions of this subdivision prevent presentation of such information in any administrative or judicial proceeding involving appraisals, assessments, or decisions of the Board.)

(g) To confer and advise with county and municipal tax authorities as to their duties under this subchapter and other laws with respect to the listing, appraisal, and assessment of property and the levying and collection of property taxes.

(h) To see that proper proceedings are brought to enforce the statutes pertaining to taxation and the collection of penalties and liabilities imposed by law upon public officers, officers of corporations, and individuals who fail, refuse, or neglect to comply with the provisions of this subchapter and other laws with respect to the taxation of property, and to call upon the Attorney General of this State or any prosecuting attorney of this State to assist in the execution of the powers conferred by the laws of this State with respect to the taxation of property.

(i) To make continuing studies of the ratio of appraised value of real and personal property to its true value in money in each county and to publish the results of the studies at least every two years.

(j) To maintain the register of experts provided for in § 105-299, to review the qualifications and work of registrants, and to advise county authorities with respect to the professional and financial capacity of registrants to comply with the terms of their employment to aid and assist counties in determining the true value in money of property subject to taxation.

§ 105-290. Appeals to the State Board of Assessment. -- (a) Duty to Hear Appeals. In its capacity as the state board of equalization and review, the State Board of Assessment shall hear and adjudicate appeals from boards of county commissioners and from county boards of equalization and review as provided in this section.

(b) Appeals from Appraisal and Listing Decisions. It shall be the duty of the State Board of Assessment to hear and to adjudicate appeals from decisions made by county boards of equalization and review and boards of county commissioners under the provisions of §§ 105-286, 105-287, 105-322, 105-325, and 105-312, whether the decisions be made by such a board upon appeal from the tax supervisor or upon such a board's own motion.

- (1) In such cases, taxpayers and persons having ownership interests in the property subject to taxation may file separate appeals or joint appeals at the election of one or more of the taxpayers. It is the intent of this provision that all owners of a single item of personal property or tract or parcel of real property be allowed to join in one appeal and also that any taxpayer be allowed to include in one appeal all objections timely presented regardless of the fact that the listing or valuation of more than one item of personal property or tract or parcel of real property is the subject of the appeal.
- (2) When an appeal has been filed as provided in § 105-286, § 105-287, § 105-324, § 105-325, or § 105-312, the State Board of Assessment shall elect whether to deal with the appeal under the procedure specified in subdivision (b)(2)a, below, or that specified in subdivision (b)(2)b, below.

- a. Hearing by Board Representatives. The Board is empowered to direct any member or members of the Board or authorized deputy to hear an appeal, to make examinations and investigations, to have made from stenographic notes a full and complete record of the evidence offered at the hearing, and to make recommended findings of fact and conclusions of law. Should the Board elect to follow this procedure, it shall fix the time and place at which its representative or representatives will hear the appeal and, at least ten days before the hearing, give written notice thereof to the appellant and to the clerk of the board of commissioners of the county from which the appeal is taken. At the hearing the Board's representative or representatives shall hear all evidence and affidavits offered by the appellant and appellee county and may exercise the authority granted by subdivision (d), below, to obtain information pertinent to decision of the appeal. The representative or representatives conducting the hearing shall submit to the Board and to the appellant and appellee a full record of the proceeding and his or their recommended findings of fact and conclusions of law. The Board shall review the record, the recommended findings of fact and conclusions of law, and any written arguments that may be submitted to the Board by the appellant or appellee within fifteen days following the date on which the findings and conclusions were submitted to the parties and shall take one of the following actions:
1. Accept the recommended findings of fact and conclusions of law and issue an appropriate order as provided in

subdivision (b)(3), below.

2. Make new findings of fact or conclusions of law based upon the record submitted by the Board's representative or representatives and issue an appropriate order as provided in subdivision (b)(3), below.
3. Rehear the appeal under the procedure provided in subdivision (b)(2)b, below, with respect to any portion of the record or recommended findings of fact or conclusions of law.

b. Hearing by Full Board. Should the Board elect not to employ the procedure provided in subdivision (b)(2)a, above, it shall fix a time and place at which the Board shall hear the appeal and, at least ten days before the hearing, give written notice thereof to the appellant and to the clerk of the board of commissioners of the county from which the appeal is taken. At the hearing the Board shall hear all evidence and affidavits offered by the appellant and appellee county and may exercise the authority granted by subdivision (d), below, to obtain information pertinent to decision of the appeal. The Board shall make findings of fact and conclusions of law and issue an appropriate order as provided in subdivision (b)(3), below.

- (3) On the basis of the findings of fact and conclusions of law made after any hearing provided for by this subdivision (b), the State Board of Assessment shall enter an order (incorporating the findings and conclusions) reducing, increasing, or confirming the valuation or valuations appealed or listing or removing from the tax lists the property whose listing has been appealed. A certified copy of the order shall be delivered to the appellant and to the clerk of the

board of commissioners of the county from which the appeal was taken, and the abstracts and tax records of the county shall be corrected to reflect the Board's order.

(c) Appeals from Adoption of Schedules, Standards, and Rules. It shall be the duty of the State Board of Assessment to hear and to adjudicate appeals from orders of boards of county commissioners adopting schedules of values, standards, and rules under the provisions of § 105-317 as prescribed in this subdivision (c), and the adoption of such schedules, standards, and rules shall not be subject to appeal under any other provision of this subchapter.

- (1) Any property owner of the county (separately or in conjunction with other property owners of the county) asserting that schedules of values, standards, and rules adopted by order of the board of county commissioners under the provisions of § 105-317 fail to meet the appraisal standard established by § 105-283 may appeal to the State Board of Assessment as provided in § 105-317(c).
- (2) Upon such an appeal the State Board of Assessment shall proceed to hear the appeal in accordance with the procedures provided in subdivisions (b)(1) and (b)(2), above, and in scheduling the hearing upon such an appeal, the Board shall give it priority over appeals that may be pending before the Board under the provisions of subdivision (b), above. The decision of the Board upon such an appeal shall be embodied in an order as provided in subdivision (c)(3), below.
- (3) On the basis of the findings of fact and conclusions of law made after any hearing provided for by this subdivision (c), the State Board of Assessment shall enter an order (incorporating the

findings and conclusions):

- a. Modifying or confirming the order adopting the schedules, standards, and rules challenged, or
- b. Requiring the board of county commissioners to revise or modify its order of adoption in accordance with the instructions of the Board and to present the order as thus revised or modified for approval by the Board under rules and regulations prescribed by the Board.

(d) Witness and Documents. Upon its own motion or upon the request of any party to an appeal, the State Board of Assessment, its members, or any authorized deputy shall examine witnesses under oath administered by any member or authorized deputy and examine the documents of any person if there is ground for believing that information contained in such documents is pertinent to the decision of any appeal pending before the Board, regardless of whether such person is a party to the proceeding before the Board. Witnesses and documents examined under the authority of this subdivision (d) shall be examined only after service of a subpoena as provided in subdivision (d)(1), below.

- (1) The State Board of Assessment, its members, or any authorized deputy is authorized and empowered to subpoena witnesses and to subpoena documents upon a subpoena to be signed by the chairman of the Board directed to the witness or witnesses or to the person or persons having custody of the documents sought. Subpoenas issued under this subdivision may be served by any officer authorized to serve subpoenas.
- (2) Any person who shall willfully fail or refuse to appear, to produce subpoenaed documents in response to a subpoena, or to

testify as provided in this subdivision (d) shall be guilty of a misdemeanor and fined and/or imprisoned in the discretion of the court.

§ 105-291. Powers of the Board. -- (a) General Powers. The State Board of Assessment is authorized to exercise all powers reasonably necessary to perform the duties imposed upon it by this subchapter and other laws of this State.

(b) Rule Making Power. The Board may adopt such rules and regulations, not inconsistent with law, as the Board may deem necessary to promote the purposes for which it is constituted, the administration of the property tax in this State, and the system of property taxation provided for in this subchapter.

(c) General Investigatory Authority. In exercising general and specific supervision over the valuation and taxation of property, the Board, its members, or any authorized deputy shall have power to examine witnesses under oath administered by any member or authorized deputy and to examine the documents of any State department, county, city, town, or taxpayer if there is ground for believing that the witnesses have or that the documents contain information pertinent to the subject of the Board's inquiry. Witnesses and documents examined under the authority of this subdivision (c) may be obtained through service of subpoenas as provided in subdivision (c)(1), below.

(1) To obtain the testimony of witnesses or to obtain access to the documents enumerated in this subdivision (c), the Board, its members, or any authorized deputy is authorized and empowered to subpoena witnesses and to subpoena documents upon a subpoena to be signed by the chairman of the Board directed to the witness or to the person having custody of the documents sought, and to be served by any officer authorized to serve subpoenas.

(2) Any person who shall willfully fail or refuse to appear; to produce

subpoenaed documents before the Board, its members, or authorized deputy in response to a subpoena; or to testify as provided in this subdivision (c) shall be guilty of a misdemeanor and fined and/or imprisoned in the discretion of the court.

(d) Certification of Actions. The Board shall have power to certify copies of its records, orders, and proceedings by attesting the copies with its official seal, and copies of records, orders, or proceedings so certified shall be received in evidence in all courts of this State with like effect as certified copies of other public records.

(e) Power to Require Reports. In its discretion, the Board may require tax supervisors, clerks of boards of county commissioners, and county accountants to file with it, when called for, complete reports of the appraised and assessed value of all real and personal property in the counties, itemized as the Board may prescribe.

(f) Power to Prescribe Record Forms. The Board may prescribe the forms, books, and records to be used in the listing, appraisal, and assessment of property and in the levying and collection of property taxes, and how the same shall be kept.

(g) Power to Recommend Appraisal Standards. The Board may develop and recommend standards and rules to be used by tax supervisors and other responsible officials in the appraisal of specific kinds and categories of property for taxation.

§ 105-292. Sessions of the Board. -- The State Board of Assessment shall hold four quarterly meetings each year in the City of Raleigh at the office of the Board. Other sessions may be held at the call of the Chairman at any time or place in the State.

§ 105-293. Duties of administrative officer. -- The administrative officer of the State Board of Assessment shall serve as secretary of the Board; shall perform all duties assigned to him by the Board; and, when authorized by the Board, shall serve as the Board's deputy for the purposes of this subchapter.

Article 16.

County Listing, Appraisal, and Assessing Officials.

§ 105-294. County tax supervisor. -- (a) Appointment. Persons occupying the position of county tax supervisor on the effective date of this act shall continue in office until the first Monday in July, 1973. At its regular meeting on that date, and every six years thereafter, the board of county commissioners of each county shall appoint a county tax supervisor. The board of county commissioners may remove the tax supervisor from office during his term for good cause shown after giving him notice in writing and an opportunity to appear and be heard at a public session of the board. Whenever a vacancy occurs in this office, the board of county commissioners shall appoint a qualified person to serve as county tax supervisor for the period of the unexpired term.

(b) Qualifications. Persons holding the position of tax supervisor on the effective date of this act shall be deemed qualified to fill the position. Any other person selected after July 1, 1973, shall be one whose experience in the appraisal of real and personal property is satisfactory to the board and whose qualifications have been certified by the State Board of Assessment as provided in § 105-289(e).

(c) Compensation. The compensation of the tax supervisor shall be fixed by the board of county commissioners, and he shall be allowed such expenses as the commissioners may approve.

(d) Alternative to County Tax Supervisor. In lieu of appointing a county tax supervisor, the board of county commissioners may impose the duties of that office as outlined in this subchapter upon any county official (other than a member of the board of county commissioners) subject to the following conditions:

- (1) County officials who are performing the duties of tax supervisor on the effective date of this act shall be deemed qualified to perform those duties.

- (2) Any other county official selected after July 1, 1973, to perform the duties of tax supervisor shall be one whose experience in the appraisal of real and personal property is satisfactory to the board and whose qualifications have been certified by the State Board of Assessment as provided in § 105-289(e).

§ 105-295. Oath of office for tax supervisor. -- Before entering upon his duties, the tax supervisor shall take and subscribe the following oath and the oaths required by §§ 11-6 and 11-7 and file them with the clerk of the board of county commissioners:

I do solemnly swear (or affirm) that I will faithfully discharge my duties as tax supervisor of County, North Carolina, and that I will not allow my actions as tax supervisor to be influenced by personal or political friendships or obligations.

.
(Signature)

§ 105- 296. Powers and duties of tax supervisor. -- (a) The county tax supervisor shall have general charge of the listing and appraising of all property in the county in accordance with the provisions of law. He shall perform the duties imposed upon him by law, and he shall have and exercise all powers reasonably necessary in the performance of his duties not inconsistent with the Constitution or the laws of this State.

(b) Within budgeted appropriations, he shall appoint the list takers and assessors and clerical assistants necessary to carry out the listing, appraisal, assessing, and billing functions required by law. He may allocate responsibility among them by territory, by subject matter, or on any other reasonable basis.

(c) At least ten days before the date as of which property is to be listed, he shall advertise in a newspaper having general circulation in the county and post in at least five public places in each township in the county a notice containing at least the following:

- (1) The date as of which property is to be listed.
- (2) The date on which listing will begin.
- (3) The date on which listing will end.
- (4) The times between the date mentioned in subdivision (c)(2), above, and the date mentioned in subdivision (c)(3), above, during which lists will be accepted.
- (5) The place or places at which lists will be accepted at the times established under subdivision (c)(4), above.
- (6) A statement that all persons who, on the date as of which property is to be listed, own property subject to taxation must list such property within the period set forth in the notice and that any person who fails to do so will be subject to the penalties prescribed by law.

If the listing period is extended in any county by the board of county commissioners, the tax supervisor shall advertise in the newspaper in which the original notice was published and post in the same places a notice of the extension and of the times during which and the place or places at which lists will be accepted during the extended period.

(d) He shall convene the list takers for instruction in methods of securing a complete list of all property in the county and of appraising and assessing, in accordance with law, all property that is to be appraised and assessed in the approaching listing period. He shall conduct this instruction at any time after the appointment of list takers as provided in subdivision (b), above, but not later than the week preceding the date as of which property is to be listed.

(e) He shall visit each list taker at least once during the listing period, and he shall confer with each list taker during the period as often as he or the list taker deems necessary to assure that all property shall be listed, appraised, and assessed according to law. He may require a list taker to visit any property subject to taxation in the county.

(f) He shall meet with each list taker prior to the date of the first meeting of the board of equalization and review for the purpose of reviewing the abstracts turned in by the list taker. He shall ascertain if property has been listed at the valuation required by law and if that standard of valuation has been applied uniformly throughout the county. If he determines that the list taker's work has been completed as required by law, he shall certify the list taker for compensation. He shall require that each list taker make out his account in detail specifying each day's services. The account shall be audited by the county accountant and approved by the board of county commissioners.

(g) He shall have power to subpoena any person for examination under oath and to subpoena documents whenever he has reasonable grounds for the belief that such person has knowledge or that such documents contain information that is pertinent to the discovery or valuation of any property subject to taxation in the county or that is necessary for compliance with the requirements as to what the tax list shall contain. The subpoena shall be signed by the chairman of the board of equalization and review if that board is in session; otherwise, it shall be signed by the chairman of the board of county commissioners. It shall be served by an officer qualified to serve subpoenas. Any person who shall wilfully fail or refuse to appear, produce subpoenaed documents, or testify concerning the subject of the inquiry shall be guilty of a misdemeanor and fined and/or imprisoned in the discretion of the court.

(h) He may require that any or all persons engaged in operating any business enterprise in the county submit, in connection with his regular tax list, a detailed inventory, statement of assets and liabilities, or other similar information pertinent to the discovery or appraisal of property taxable in the county. Inventories, statements of assets and liabilities, or other information secured by the tax supervisor under the terms of this subdivision, but not expressly required by this subchapter to be shown on the abstract itself, shall not be open to public inspection. Any tax supervisor or other official disclosing information so obtained, except as such disclosure may be necessary in listing or appraising property or in administrative or judicial proceedings relating to listing or appraising, shall be guilty of a misdemeanor and punishable by fine not exceeding fifty dollars (\$50.00).

(i) Prior to the first meeting of the board of equalization and review, he shall have the power, for good cause, to change the appraisal of any property

by the list taker if the property is subject to appraisal for the current year. Notice of a change in appraisal made by the tax supervisor shall be given to the taxpayer prior to the first meeting of the board of equalization and review.

§ 105-297. Assistant tax supervisors. -- The board of county commissioners may, upon the recommendation of the tax supervisor, appoint one or more assistant tax supervisors. The board may delegate to assistant tax supervisors appointed under this section responsibility for the appraisal of real property, the listing and appraisal of business property, or such other duties as the board deems advisable.

§ 105-298. Oath of office for list takers and assessors. -- Before entering upon his duties, each list taker and assessor shall take and subscribe the following oath and the oaths required by §§ 11-6 and 11-7 and file them with the clerk of the board of county commissioners:

I do solemnly swear (or affirm) that I will faithfully discharge my duties as list taker and assessor of County, North Carolina, and that I will not allow my actions as list taker and assessor to be influenced by personal or political friendships or obligations.

.
(Signature)

§ 105-299. Employment of experts; registration. -- (a) Employment.

The board of county commissioners may employ persons having expert knowledge of the value and methods of appraising the kinds of property within the county to aid and assist the list takers, the tax supervisor, and the board of equalization and review in determining the true value in money of the property in the county. Contracts for the employment of experts shall be deemed to be contracts for personal services and shall not be subject to the provisions of Article 8, Chapter 143 of the General Statutes.

(b) Registration. Any person may register as an appraisal expert by filing the following information with the State Board of Assessment:

- (1) A resume of his training and experience.
- (2) A roster of his employees with a statement of the qualifications of each.
- (3) A statement of his financial condition in such detail as the registrant deems advisable.
- (4) A statement of his name and home office address.
- (5) In the case of a corporation, partnership, unincorporated association, company, or firm, a statement of ownership.

§ 105-300. Tax commission. -- In all counties having a tax commission or comparable agency, the commission or agency shall, except for levying taxes, perform all the duties required by this subchapter to be performed by the board of equalization and review and the board of county commissioners. All expenses incurred by the tax commission or agency or its appointees in accordance with this subchapter shall be paid by the board of county commissioners out of the general county fund.

Article 17.

Administration of Listing.

§ 105-301. Place for listing real property. -- All taxable real property that is not required by this subchapter to be appraised originally by the State Board of Assessment shall be listed in the county in which it is situated. If all or part of the real property is situated within the boundaries of a municipal corporation, this fact shall be specified on the abstract as required by § 105-309. Nothing in this section shall be construed to conflict with the provisions of §§ 105-326 through 105-328.

§ 105-302. In whose name real property is to be listed. -- (a) Taxable real property shall be listed in the name of the owner, and it shall be the owner's duty to list it unless the board of county commissioners shall have adopted a permanent listing system as provided in § 105-303(b). For purposes of this section, the board of county commissioners may require that real property be listed in the name of the owner of record as of the day as of which property is to be listed under § 105-285.

(b) If real property is listed in the name of one other than the person in whose name it should be listed, and the name of the proper person is later ascertained, the abstract and tax records shall be corrected to list the property in the name of the person in whose name it should have been listed. The corrected listing shall have the same force and effect as if the real property had been listed in the name of the proper person in the first instance.

(c) For purposes of this subchapter:

- (1) The owner of the equity of redemption in real property subject to a mortgage or deed of trust shall be considered the owner of the property, and such real property shall be listed in the name of the owner of the equity of redemption.
- (2) Real property owned by a corporation shall be listed in the name of the corporation.
- (3) Real property owned by an unincorporated association shall be listed in the name of the association.
- (4) Real property owned by a partnership shall be listed in the name of the partnership.

- (5) Real property held in connection with a sole proprietorship shall be listed in the name of the owner, and the name and address of the proprietorship shall be noted on the abstract.
- (6) Real property of which a decedent died possessed, if not under the control of an executor or administrator, shall be listed in the names of the heirs or devisees if known, but such property may be listed as property of "the heirs" or "the devisees" of the decedent, without naming them, until they have given the tax supervisor notice of their names and of the division of the estate. It shall be the duty of an executor or administrator having control of real property to list it in his fiduciary capacity, as required by subdivision (c)(7), below, until he is divested of control of the property. However, the right of an administrator or executor of a deceased person to petition for the sale of real property to make assets shall not be considered control of the real property for the purposes of this subdivision.
- (7) Real property, the title to which is held by a trustee, guardian, or other fiduciary, shall be listed by the fiduciary in his fiduciary capacity except as otherwise provided in this section.
- (8) A life tenant or tenant for the life of another shall be considered the owner of real property, and it shall be his duty to list the property for taxation, indicating on the abstract that he is a life tenant or tenant for the life of another named individual.
- (9) Upon request to and with the approval of the tax supervisor, undivided interests in real property owned by tenants in common

who are not copartners may be listed by the respective owners in accordance with their respective undivided interests. Otherwise, real property held by tenants in common shall be listed in the names of all the owners.

- (10) Real property owned by husband and wife as tenants by the entirety shall be listed on a single abstract in the names of both tenants, and the nature of their ownership shall be indicated thereon.
- (11) When land is owned by one party and improvements thereon or special rights (such as mineral, timber, quarry, water power, or similar rights) therein are owned by another party, the parties shall list their interests separately unless, in accordance with contractual relations between them, both the land and the improvements and special rights are listed in the name of the owner of the land.
- (12) If the person in whose name real property should be listed is unknown, or if title to real property is in dispute, the property shall be listed in the name of the occupant or, if there be no occupant, in the name of "unknown owner." Such a listing shall not affect the validity of the lien for taxes created by § 105-355. When the name of the owner is later ascertained, the provisions of subdivision (b), above, shall apply.

§ 105-303. Obtaining information on real property transfers; permanent listing. -- (a) To facilitate the accurate listing of real property for taxation, the board of county commissioners may require the register of deeds to comply with the provisions of subdivision (a)(1), below, or it may require him to comply with the provisions of subdivision (a)(2), below:

(1) When any conveyance of real property (other than a deed of trust or mortgage) is recorded, the board of county commissioners may require the register of deeds to certify to the tax supervisor:

- a. The name of the person conveying the property.
- b. The name of the person to whom the property is conveyed.
- c. A description of the property sufficient to locate and identify it.
- d. A statement as to whether the parcel is conveyed in whole or in part.

(2) When any conveyance of real property (other than a deed of trust or mortgage) is submitted for recordation, the board of county commissioners may require the register of deeds to refuse to record it unless it has been presented to the tax supervisor and the tax supervisor has noted thereon that he has obtained the information he desires from the conveyance and from the person recording it.

(b) With the approval of the State Board of Assessment, the board of county commissioners may install a permanent listing system. (The Board's approval shall not, however, be required for any such system installed prior to April 3, 1939.)

Under such a system the provisions of subdivision (b)(1) through (b)(4), below, shall apply.

- (1) The tax supervisor shall be responsible for listing all real property on the abstracts and tax records each year in the name of the owner of record as of the day as of which property is to be listed under § 105-285.
- (2) Persons whose duty it is to list real property under the provisions of § 105-302 shall be relieved of that duty, but annually, during the listing period established by § 105-307, such persons shall furnish the tax supervisor (or proper list taker) with the information concerning improvements on and separate rights in real property required by § 105-309(d)(3) through (d)(5).
- (3) The penalties imposed by §§ 105-308 and 105-312 shall not be imposed for failure to list real property for taxation, but they shall be imposed for failure to comply with the provisions of subdivision (b)(2), above, with respect to reporting the construction or acquisition of improvements on and separate rights in real property. In such a case, the penalty prescribed by § 105-312 shall be computed on the basis of the tax imposed on the improvements and separate rights.
- (4) The State Board of Assessment may authorize the board of county commissioners to make additional modifications of the listing requirements of this subchapter, but no such modification shall conflict with the provisions of subdivisions (b)(1) through (b)(3), above.

§ 105-304. Place for listing tangible personal property. -- (a) Listing instructions. This section shall apply to all taxable tangible personal property that has a tax situs in this State and that is not required by this subchapter to be appraised originally by the State Board of Assessment. The place in this State at which such property is taxable shall be determined according to the rules prescribed in subdivisions (c) through (h), below. The person whose duty it is to list property shall list it in the county in which the place of taxation is located, indicating on the abstract the information required by § 105-309(e). If the place of taxation lies within a city or town that requires separate listing under § 105-326(a), the person whose duty it is to list shall also list the property for taxation in the city or town.

(b) Definitions. For purposes of this section:

- (1) "Situated" means more or less permanently located.
- (2) "Business premises" includes, for purposes of illustration, but is not limited to the following: store, mill, dockyard, piling ground, shop, office, mine, farm, factory, warehouse, rental real estate, place for the sale of property (including the premises of a consignee), and place for storage (including a public warehouse).

(c) General Rule. Except as otherwise provided in subdivisions (d) through (h), below, tangible personal property shall be taxable at the residence of the owner. For purposes of this section:

- (1) The residence of an individual person who has two or more places in this State at which he occasionally dwells shall be the place at which he dwelt for the longest period of time during the calendar year immediately preceding the date as of which property is to be listed for taxation.

- (2) The residence of a domestic or foreign taxpayer other than an individual person shall be the place at which its principal North Carolina place of business is located.

(d) Property of Taxpayers With No Fixed Residence in this State.

- (1) Tangible personal property owned by an individual nonresident of this State shall be taxable at the place in this State at which the property is situated.
- (2) Tangible personal property owned by a domestic or foreign taxpayer (other than an individual person) that has no principal office in this State shall be taxable at the place in this State at which the property is situated.

(e) Farm Products. Farm products produced in this State, if owned by their producer, shall be taxable at the place in this State at which they were produced.

(f) Property Situated or Commonly Used at Premises Other Than Owner's Residence. Subject to the provisions of subdivision (e), above:

- (1) Tangible personal property situated at or commonly used in connection with a temporary or seasonal dwelling owned or leased by the owner of the personal property shall be taxable at the place at which the temporary or seasonal dwelling is situated.
- (2) Tangible personal property situated at or commonly used in connection with a business premises hired, occupied, or used by the owner of the personal property (or by the owner's agent or employee) shall be taxable at the place at which the business premises is situated. Tangible personal property that may be used by the public generally or that is used to sell or vend merchandise to the public shall be regarded as falling within

the provisions of this subdivision (f)(2).

- (3) In applying the provisions of subdivisions (f)(1) and (f)(2), above, the temporary absence of tangible personal property from a temporary or seasonal dwelling or business premises on the day as of which property is to be listed shall not affect the application of the rules established in those subdivisions. The presence of tangible personal property at a temporary or seasonal dwelling or business premises on the day as of which property is to be listed shall be prima facie evidence that it is situated at or commonly used in connection with the temporary or seasonal dwelling or business premises.

(g) The tangible personal property of a decedent whose estate is in the process of administration or has not been distributed shall be taxable at the place at which it would be taxable if the decedent were still alive and still residing at the place at which he resided at the time of his death.

(h) Tangible personal property within the jurisdiction of the State held by a resident or nonresident trustee, guardian, or other fiduciary having legal title to the property shall be taxable in accordance with the following rules:

- (1) If any beneficiary is a resident of the State, an amount representing his portion of the property shall be taxable at the place at which it would be taxable if he were the owner of his portion.
- (2) If any beneficiary is a nonresident of the State, an amount representing his portion of the property shall be taxable at the place at which it would be taxable if the fiduciary were the beneficial owner of the property.

§ 105-305. Place for listing intangible personal property. -- (a) Listing instructions. This section shall apply to all taxable intangible personal property that has a tax situs in this State, that is not required by this subchapter to be appraised originally by the State Board of Assessment, and that is not subject to taxation under the provisions of Schedule H, §§ 105-198 through 105-217. The place in this State at which such property is taxable shall be determined according to the rules prescribed in subdivisions (b) through (e), below. The person whose duty it is to list property shall list it in the county in which the place of taxation is located, indicating on the abstract the information required by § 105-309(e). If the place of taxation lies within a city or town that requires separate listing under § 105-326(a), the person whose duty it is to list shall also list the property for taxation in the city or town.

(b) General Rule. Except as otherwise provided in subdivisions (c) through (e), below, intangible personal property shall be taxable at the residence of the owner. For purposes of this section:

- (1) The residence of a person who has two or more places in this State at which he occasionally dwells shall be the place at which he dwelt for the longest period of time during the calendar year immediately preceding the date as of which property is to be listed for taxation.
- (2) The residence of a domestic or foreign taxpayer other than an individual person shall be the place at which its principal North Carolina office is located.

(c) Intangible personal property representing an interest or interests in real property that is situated in this State shall be taxable in the place in which the represented real property is located.

(d) The intangible personal property of a decedent whose estate is in the process of administration or has not been distributed shall be taxable in the place at which it would be taxable if the decedent were still alive and still residing in the place at which he resided at the time of his death.

(e) Intangible personal property within the jurisdiction of the State held by a resident or nonresident trustee, guardian, or other fiduciary having legal title to the property shall be taxable in accordance with the following rules:

- (1) If any beneficiary is a resident of the State, an amount representing his portion of the property shall be taxable in the place at which it would be taxable if he were the owner of his portion.
- (2) If any beneficiary is a nonresident of the State, an amount representing his portion of the property shall be taxable in the place at which it would be taxable if the fiduciary were the beneficial owner of the property.

§ 105-306. In whose name personal property is to be listed. -- (a) Taxable personal property shall be listed in the name of the owner on the day as of which property is to be listed for taxation, and it shall be the duty of the owner to list the property.

(b) If personal property is listed in the name of a person other than the one in whose name it should be listed, and the name of the proper person is later ascertained, the abstract and tax records shall be corrected to list the property in the name in which it should have been listed. The corrected listing shall have the same force and effect as if the personal property had been listed in the name of the proper person in the first instance.

(c) For purposes of this subchapter:

- (1) The owner of the equity of redemption in personal property subject to a chattel mortgage shall be considered the owner of the property.
- (2) The vendee of personal property under a conditional bill of sale, or under any other sale contract through which title to the property is retained by the vendor as security for the payment of the purchase price, shall be considered the owner of the property if he has possession of or the right to use the property.
- (3) Personal property owned by a corporation, partnership, or unincorporated association shall be listed in the name of the corporation, partnership, or unincorporated association.
- (4) Personal property held in connection with a sole proprietorship shall be listed in the name of the owner, and the name and address of the proprietorship shall be noted on the abstract.

- (5) Personal property of which a decedent died possessed, if not under the control of an executor or administrator, shall be listed in the names of the next of kin or legatees if known, but such property may be listed as property of "the next of kin" or "the legatees" of the decedent, without naming them, until they have given the tax supervisor notice of their names and of the division of the estate. It shall be the duty of an executor or administrator having control of personal property to list it in his fiduciary capacity, as required by subdivision (c)(6), below, until he is divested of control of the property.
- (6) Personal property, the title to which is held by a trustee, guardian, or other fiduciary, shall be listed by the fiduciary in his fiduciary capacity except as otherwise provided in this section.
- (7) If personal property is owned by two or more persons who are joint owners, each owner shall list the value of his interest. However, if the joint owners are husband and wife, the property owned jointly shall be listed on a single abstract in the names of both the husband and the wife.
- (8) If the person in whose name personal property should be listed is unknown, or if the ownership of the property is in dispute, the property shall be listed in the name of the person in possession of the property, or, if there appears to be no person in possession, in the name of "unknown owner." When the name of the owner is later ascertained, the provisions of subdivision (b), above, shall apply.

§ 105-307. Length of listing period; preliminary work. -- The period during which property is to be listed for taxation each year shall begin on the first business day of the month of January and shall continue for thirty days. The board of county commissioners may, in any year, extend the period for an additional thirty days; in years of octennial appraisal of real property, the board may extend the period for an additional sixty days. Any action by the board of county commissioners extending the listing period shall be recorded in the minutes of the board, and notice thereof shall be published as required by § 105-296(c). The entire period for listing, whether it be thirty, sixty, or ninety days, shall be considered the regular listing period for the particular year within the meaning of this subchapter.

Nothing in this section shall be construed to prevent the tax supervisor, list takers, assistants, and experts employed under § 105-299 from conducting preparatory work prior to the opening of the listing period, but no final appraisal shall be made before the day as of which the value of property is to be determined under the provisions of § 105-285.

§ 105-308. Duty to list; penalty for failure. -- Every person in whose name any property or poll is to be listed under the terms of this subchapter shall list the property or poll with the tax supervisor (or proper list taker) within the time allowed by law on an abstract setting forth the information required by this subchapter.

In addition to all other penalties prescribed by law, any person whose duty it is to list any property or poll who willfully fails or refuses to list the same within the time prescribed by law shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed six months. The failure to list shall be prima facie evidence that the failure was willful.

Any person who removes or conceals property for the purpose of evading taxation or who aids or abets the removal or concealment of property for the purpose of evading taxation shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed six months.

§ 105-309. What the abstract shall contain. -- (a) Each person whose duty it is to list property for taxation shall file each year with the tax supervisor or proper list taker a tax list or abstract showing, as of January 1, the information required by this section. Subject to the provisions of subdivisions (a)(1) and (a)(2), below, each person whose duty it is to list property for taxation shall file a separate abstract.

- (1) Tenants by the entirety shall file a single abstract listing the real property so held, together with all personal property they own jointly.
- (2) Tenants in common shall file a single abstract listing the real property so held, together with all personal property that they own jointly, unless, as provided in § 105-302(c)(9), the tax supervisor allows them to list their undivided interests in the real property on separate abstracts.

(b) Each abstract shall show the taxpayer's name; residence address; and, if required by the tax supervisor or list taker, business address.

- (1) An individual trading under a firm name shall show his name and address and also the name and address of his business firm.
- (2) An unincorporated association shall show both the name and address of the association and the names and addresses of its principal officers.
- (3) A partnership shall show both the name and address of the partnership and the names and addresses of its full partners.

(c) Each male taxpayer shall give his age when listing in the county in which he resides.

(d) Each tract, parcel, or lot of real property owned or controlled in the county shall be listed in accordance with the following instructions:

(1) Real property not divided into lots shall be described by giving:

- a. The township in which located.
- b. The total number of acres in the tract, or, if smaller than one acre, the dimensions of the parcel.
- c. The tract name (if any), the names of at least two adjoining landowners, a reference to the tract's designation on any map maintained in the office of the tax supervisor or on file in the office of the register of deeds, or some other description sufficient to identify and locate the property by parol testimony.
- d. If applicable, the number of acres of:
 1. Cleared land.
 2. Woods and timber land.
 3. Land containing mineral or quarry deposits.
 4. Land susceptible of development for water power.
 5. Wasteland.
- e. The portion of the tract or parcel located within the boundaries of any municipality.

(2) Real property divided into lots shall be described by giving:

- a. The township in which located.

- b. The dimensions of the lot.
 - c. The location of the lot, including its street number (if any).
 - d. The lot's designation on any map maintained in the office of the tax supervisor or on file in the office of the register of deeds, or some description sufficient to identify and locate the property by parol testimony.
 - e. The portion of the lot located within the boundaries of any municipality.
- (3) In conjunction with the listing of any real property under subdivisions (d)(1) and (d)(2), above, there shall be given a short description of any buildings and other improvements thereon that belong to the owner of the land.
- (4) Buildings and other improvements having a value in excess of one hundred dollars (\$100.00) that have been acquired, begun, erected, damaged, or destroyed since the time of the last appraisal of the property shall be described.
- (5) If some person other than the owner of a tract, parcel, or lot shall own any buildings or other improvements thereon or separate rights (such as mineral, quarry, timber, water power, or other rights) therein, that fact shall be specified on the abstract on which the land is listed, together with the name and address of the owner of the buildings, other improvements, or rights.
- a. Buildings, other improvements, and separate rights owned by a taxpayer with respect to the lands of another shall be listed separately and identified so as to indicate the name of the owner thereof and the tract, parcel, or lot on which the

buildings or other improvements are situated or to which the separate rights appertain.

- b. In accordance with the provisions of § 105-302(c)(11), buildings or other improvements or separate rights owned by a taxpayer with respect to the lands of another may be listed either in the name of the owner of the buildings, other improvements, or rights, or in the name of the owner of the land.

(e) Personal property shall be listed to indicate the township and municipality, if any, in which it is taxable and shall be itemized by the taxpayer in such detail as may be prescribed by an abstract form approved by the State Board of Assessment.

- (1) Whenever the tax supervisor or list takers shall deem it necessary to obtain complete listings, they may require taxpayers to submit additional information, inventories, and itemized lists of personal property.
- (2) At the request of the tax supervisor or list taker, the taxpayer shall furnish any information he may have with respect to the true value of the personal property he is required to list.

(f) At the end of the abstract each person whose duty it is to list property for taxation shall sign the affirmation required by § 105-310.

§ 105-310. Affirmation; penalty for false affirmation. -- There shall be annexed to the abstract on which the taxpayer's property is listed the following affirmation, which shall be signed by an individual qualified under the provisions of § 105-311:

Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this listing, including any accompanying statements, inventories, schedules, and other information, is true and complete. (If this affirmation is signed by an individual other than the taxpayer, he affirms that he is familiar with the extent and true value of all of the taxpayer's property subject to taxation in this county and that his affirmation is based on all the information of which he has any knowledge.)

Any individual who willfully makes and subscribes an abstract listing required by this subchapter which he does not believe to be true and correct as to every material matter shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine not to exceed \$500 or imprisonment not to exceed six months.

§ 105- 311. Duty to appear for purposes of listing and signing affirmation; use of agents and mail. -- (a) Except as otherwise provided in this section, the person whose duty it is to list property for taxation shall appear before the tax supervisor or proper list taker for purposes of listing and shall sign the affirmation required by § 105-310 to be annexed to the completed abstract on which the property is listed.

- (1) In the case of an individual taxpayer who is unable to list his property, a guardian, authorized agent, or other person having knowledge of and charged with the care of the person and property of the taxpayer shall appear for purposes of listing and shall sign the required affirmation in the name of the taxpayer, noting thereon the capacity in which he signs.
- (2) In the case of a corporation, partnership, or unincorporated association, a principal officer of the taxpayer shall appear for purposes of listing the taxpayer's property and shall sign the required affirmation in the name of the taxpayer, noting thereon the capacity in which he signs. No other agent shall be permitted to sign the affirmation required on such a taxpayer's abstract.
- (3) In the case of an individual who is not a resident of the county in which his property is to be listed, the taxpayer shall sign the affirmation required on the abstract on which his property is listed, but he may submit the completed abstract by mail or by an authorized agent.

(b) Any abstract submitted by mail may be accepted or rejected by the tax supervisor in his discretion. However, the board of county commissioners, with the approval of the State Board of Assessment, may by resolution provide for the

general acceptance of completed abstracts submitted by mail. In no event shall an abstract submitted by mail be accepted unless the affirmation thereon is signed by the individual prescribed in subdivision (a), above.

§ 105-312. Discovered property; appraisal; penalty. -- (a) Definitions.

For purposes of this subchapter:

- (1) The phrase "discovered property" shall include property that was not listed by the taxpayer or any other person during a regular listing period and also property that was listed but with regard to the value, quantity, or other measurement of which the taxpayer made a substantial understatement in listing.
- (2) The phrase "failure to list property" shall include both the omission to list property during a regular listing period and the taxpayer's substantial understatement of value, quantity, or other measurement with regard to property listed.
- (3) The phrase "to discover property" shall refer to the determination that property has not been listed during a regular listing period and to the identification of the omitted item, and it shall also refer to the determination that listed property was returned by the taxpayer with a substantial understatement of value, quantity, or other measurement.
- (4) The phrase "substantial understatement" as used in these definitions shall be interpreted to mean the omission of a material portion of the value, quantity, or other measurement of taxable property; the determination of materiality in each case shall be made by the official or agency by whom the discovery is made, subject to the taxpayer's right to appeal the determination to the county board of equalization and review and State Board of Assessment.

(b) Duty to Discover and List Property. It shall be the duty of every official charged with listing, appraising, and assessing property under the terms of this subchapter to discover property, to list discovered property, to appraise and assess it, and to take the action necessary to prevent failures to list property.

(c) Carrying Forward Real Property. At the close of the regular listing period each year, the tax supervisor shall compare the tax lists submitted during the listing period just ended with the lists for the preceding year, and he shall carry forward to the lists of the current year all real property that was listed in the preceding year but that was not listed for the current year. When carried forward, the real property shall be listed in the name of the taxpayer who listed it in the preceding year unless, under the provisions of § 105-302, it must be listed in the name of another taxpayer. Real property carried forward in this manner shall be deemed to be discovered property, and the procedures prescribed in subdivision (d), below, shall be followed unless the property discovered is listed in the name of the taxpayer who listed it for the preceding year and the property is not subject to appraisal under either § 105-286 or § 105-287 in which case no notice of the listing and valuation need be sent to the taxpayer.

(d) Procedure for Listing, Appraising, and Assessing Discovered Property. Subject to the provisions of subdivision (c), above, and the presumptions established by subdivision (f), below, discovered property shall be listed in the name of the person required by § 105-302 or § 105-306. The abstract listing discovered property shall be signed by the tax supervisor, list taker, or other person designated by the tax supervisor. If sufficient information as to the true value of the discovered property can be obtained at the time it is discovered, the tax supervisor shall make a tentative appraisal of the property. Both the listing and the appraisal shall be subject to the approval of the board of equalization and review, or, if that board has adjourned, the approval of the board of county commissioners, subject to the right of appeal to the State Board

of Assessment under the provisions of § 105-324. The tax supervisor shall then mail a notice to the person in whose name the discovered property has been listed at his last known address; if, under the provisions of § 105-302 or § 105-306, the property has been listed in the name of the occupant or person in possession, the notice shall be mailed to him. The required notice shall state that:

- (1) The described property has been listed in the name of the addressee.
- (2) The property has been tentatively appraised at a specified figure, or the property will be appraised at the meeting provided for in subdivision (d)(3), below.
- (3) The listing of the property and the tentative appraisal will be presented for review and approval by the board of equalization and review, or, if that board has adjourned, by the board of county commissioners. (If the property has not been given a tentative appraisal by the tax supervisor, the notice shall state that the listing of the property will be presented for approval and that the appropriate board will appraise it at the designated meeting.)
- (4) The board of equalization and review or board of county commissioners will meet at a specified time and place to review and approve the listing and appraisal of the property, or to appraise the property.
- (5) The addressee shall have a right to be present at the meeting referred to in subdivision (d)(4), above; to be heard; and to present any objections that he may have to the listing or appraisal of the property.

(e) Record of Discovered Property. When property is discovered, the taxpayer's original abstract (if one was submitted) may be corrected or a new abstract may be prepared to reflect the discovery. If a new abstract is prepared, it may be filed with the abstracts that were submitted during the regular listing period, or it may be filed separately with abstracts designated "Late Listings." Regardless of how filed, the listing shall have the same force and effect as if it had been submitted during the regular listing period.

(f) Presumptions. When property is discovered and listed to a taxpayer in any year, it shall be presumed that it should have been listed by the same taxpayer for the preceding five years unless the taxpayer shall produce satisfactory evidence that the property was not in existence, that it was actually listed for taxation, or that it was not his duty to list the property during those years or some of them under the provisions of §§ 105-302 and 105-306. If it is shown that the property should have been listed by some other taxpayer during some or all of the preceding years, the property shall be listed against the appropriate taxpayer for the proper years.

(g) Taxation of Discovered Property. When property is discovered, it shall be taxed for the year in which discovered and for any of the preceding five years during which it escaped taxation in accordance with the assessed value it should have been assigned in each of the years for which it is to be taxed and the rate of tax imposed in each such year. The penalties prescribed by subdivision (h), below, shall be computed and imposed regardless of the name in which the discovered property is listed. If the discovery is based upon an understatement of value, quantity, or other measurement rather than an omission from the tax list, the tax shall be computed on the additional valuation fixed upon the property, and the penalties prescribed by subdivision (h), below, shall be computed on the basis of

the additional tax.

(h) Computation of Penalties. Having computed each year's taxes separately as provided in subdivision (g), above, there shall be added a penalty of 10% of the amount of the tax for the earliest year in which the property was not listed, plus an additional 10% of the same amount for each subsequent listing period that elapsed before the property was discovered. This penalty shall be computed separately for each year in which a failure to list occurred; and the year, the amount of the tax for that year, and the total of penalties for failure to list in that year shall be shown separately on the tax records; but the taxes and penalties for all years in which there was a failure to list shall then be tallied on a single tax receipt.

(i) Collection. For purposes of tax collection and foreclosure, the total figure obtained and recorded as provided in subdivision (h), above, shall be deemed to be a tax for the fiscal year beginning on July 1 of the calendar year in which the property was discovered. The schedule of discounts for prepayment and interest for late payment applicable to taxes for the fiscal year referred to in the preceding sentence shall apply when the total figure on the single tax receipt is paid.

(j) Tax Receipts Charged to Collector. Tax receipts prepared as required by subdivisions (h) and (i), above, for the taxes and penalties imposed upon discovered property shall be delivered to the tax collector, and he shall be charged with their collection. Such receipts shall have the same force and effect as if they had been delivered to the collector at the time of the delivery of the regular tax receipts for the current year, and the taxes charged in the receipts shall be a lien upon the property in accordance with the provisions of § 105-355.

(k) Power to Compromise. After a tax receipt computed and prepared as required by subdivisions (g) and (h), above, has been delivered and charged to the tax collector as prescribed in subdivision (j), above, the board of county commissioners, upon the petition of the taxpayer, may compromise, settle, or adjust the county's claim for taxes arising therefrom.

(1) Application to Municipal Corporations. The provisions of this section shall apply to all cities, towns, and other municipal corporations having power to tax property. In such governmental units, the powers and duties assigned by this section to the tax supervisor shall be exercised by any person to whom they may be assigned by the governing body of the unit, and the powers and duties assigned to the board of county commissioners shall be exercised by the governing body of the unit.

Article 18.

Reports in Aid of Listing.§ 105-313. Report of personal property by multi-county businesses. --

Any person engaged in business in more than one county of this State and maintaining taxable personal property in connection with his business in more than one county of this State shall, upon the request of the administrative officer of the State Board of Assessment or the tax supervisor of any county in which such property is maintained, file a report with the State Board of Assessment showing, as of January 1 of any year, the following information:

- (1) A list of the counties of this State in which is situated taxable personal property maintained by the owner in connection with his business.
- (2) The true value of the owner's taxable personal property maintained and situated in each county.
- (3) The total true value of the owner's taxable personal property maintained and situated in this State.

This report shall be subscribed and sworn to by the owner or an authorized agent who has knowledge of the facts contained in the report.

§ 105-314. Information concerning tax situs of motor vehicles. --

(a) Every motor vehicle owner applying to the State Department of Motor Vehicles for motor vehicle license tags shall specify in the application the county in which each such motor vehicle is subject to ad valorem taxation. If any such vehicle is not subject to ad valorem taxation in this State, that fact, with the reason therefor, shall be stated in the application. No State license tags shall be issued to any applicant until the requirements of this subdivision have been met.

(b) Upon request from any county, the Commissioner of Motor Vehicles shall send to the tax supervisor of the county a list of motor vehicles subject to ad valorem taxation in that county as shown by the Commissioner's record of applications filed during the year preceding the day as of which property is to be listed. As compensation, the Commissioner shall charge the county the actual cost incurred in the preparation of this list.

§ 105-315. Reports by persons having custody of tangible personal property of others. -- (a) As of January 1, every person having custody of taxable tangible personal property that has been entrusted to him by another for business purposes, storage, sale, or renting shall furnish the appropriate tax supervisor the reports required by subdivisions (a)(1) and (a)(2), below:

- (1) For farm products that are owned by the original producer and that were produced in a county of this State other than that in which the products are situated, there shall be furnished to the tax supervisor of the county in which the products were produced the name of the producer, the amount of the property, and the amount of money, if any, advanced against the produce by the person having custody of it.
- (2) For all other tangible personal property, there shall be furnished to the tax supervisor of the county in which the property is situated the name of the owner of the property, the amount of the property, and the amount of money, if any, advanced against the property by the person having custody of it.
- (3) For purposes of illustration, but not by way of limitation, the term "person having custody of taxable tangible personal property" as used in this subdivision (a) shall include warehouses, cooperative growers' and marketing associations, consignees, factors, commission merchants, and brokers.

(b) Any person who fails to make the reports required by subdivision (a), above, by January 15 in any year shall be liable to the counties in which the property is taxable for a penalty to be measured by any portion of the tax on the

property that has not been paid at the time the action to collect this penalty is brought plus two hundred fifty dollars (\$250.00). This penalty may be recovered in a civil action in the appropriate division of the general court of justice of the county in which the property is taxable. Upon recovery of this penalty, the tax on the property shall be deemed to be paid.

§ 105-316. Reports by house trailer park, marina, and aircraft storage facility operators. -- (a) As of January 1 each year:

- (1) Every operator of a park or storage lot renting or leasing space for three or more house trailers or mobile homes shall furnish to the tax supervisor of the county in which the park or lot is located the name of the owner of and a description of each house trailer or mobile home situated thereon.
- (2) Every operator of a marina or comparable facility renting or leasing space for three or more boats shall furnish to the tax supervisor of the county in which the marina or comparable facility is located the name of the owner of and a description of each boat for which space is rented or leased.
- (3) Every operator of a storage facility renting or leasing space for three or more airplanes or other aircraft shall furnish to the tax supervisor of the county in which the storage facility is located the name of the owner of and a description of each airplane or aircraft for which space is rented or leased.

(b) Any person who fails to make any report required by subdivision (a), above, by January 15 of any year shall be liable to the county in which the house trailers, mobile homes, boats, or airplanes are taxable for a penalty to be measured by any portion of the tax on the personal property that has not been paid at the time the action to collect this penalty is brought, plus two hundred fifty dollars (\$250.00). This penalty may be recovered in a civil action in the appropriate division of the general court of justice of the county in which the personal property is taxable. Upon recovery of this penalty, the tax on the personal property shall be deemed to be paid.

Article 19.

Administration of Real Property Appraisal.

§ 105-317. Appraisal of real property; adoption of schedules, standards, and rules. -- (a) Whenever any real property is appraised it shall be the duty of the persons making appraisals:

- (1) In determining the true value of land, to consider as to each tract, parcel, or lot separately listed at least its advantages as to location; zoning; quality of soil; quantity and quality of timber; water power; water privileges; mineral, quarry, or other valuable deposits; fertility; adaptability for agricultural, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value.
- (2) In determining the true value of a building or other improvement, to consider at least its location; type of construction; age; replacement cost; cost; adaptability for residence, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value.
- (3) To appraise partially completed buildings in accordance with the degree of completion on January 1.

(b) In preparation for each revaluation of real property required by § 105-286, it shall be the duty of the tax supervisor to see that:

- (1) There be developed and compiled uniform schedules of values, standards, and rules to be used in appraising real property in the county after having been approved by the board of county commissioners as provided in subdivision (c), below. (The schedules of values, standards, and rules shall be prepared in sufficient detail to

enable those making appraisals to adhere to them in appraising the kinds of real property commonly found in the county; they shall be:

- a. Prepared prior to each revaluation required by § 105-286;
 - b. In written or printed form; and
 - c. Available for public inspection upon request.)
- (2) Every lot, parcel, tract, building, structure, and improvement being appraised be actually visited, observed, and appraised by a competent appraiser, either one appointed under the provisions of § 105-296 or one employed under the provisions of § 105-299.
- (3) A separate property record be prepared for each tract, parcel, lot, or group of contiguous lots, which record shall show the information required for compliance with the provisions of § 105-309 insofar as they deal with real property, as well as that required by this section. (The purpose of this subdivision (b)(3) is to require that individual property records be maintained in sufficient detail to enable property owners to ascertain the method, rules, and standards of value by which property is appraised.)

(c) The schedules of values, standards, and rules required by subdivision (b)(1), above, shall be reviewed and approved by the board of county commissioners before they are used. Should the board of county commissioners approve the schedules, standards, and rules, it shall issue an order adopting them and shall cause a copy of

the order to be published in the form of a notice in a newspaper having general circulation in the county, stating in the notice that the schedules, standards, and rules to be used in the next scheduled reappraisal of real property have been adopted and that they are open to examination by any property owner of the county at the office of the tax supervisor for a period of ten days from the date of publication of the notice.

- (1) Any property owner of the county (separately or in conjunction with other property owners of the county) asserting that the schedules, standards, and rules adopted by the board of county commissioners under the provisions of this section fail to meet the appraisal standard established by § 105-283 may except to the order and appeal therefrom to the State Board of Assessment at any time within thirty days after the date of the publication of the adoption order by filing a written notice of the appeal with the clerk of the board of county commissioners and with the State Board of Assessment. At the time of filing the notices of appeal, the appellant or appellants shall file with the clerk of the board of county commissioners and with the State Board of Assessment a written statement of the grounds of appeal. Upon timely appeal, the State Board of Assessment shall proceed under the provisions of § 105-290(c).
- (2) The appeal procedure provided herein shall be the exclusive administrative means for challenging the order of the board of county commissioners adopting schedules, standards, and rules under this section.

Article 20.

Approval, Preparation, and Disposition of Records.

§ 105-318. Forms for listing, appraising, and assessing property. -- The State Board of Assessment may design and prescribe the books and forms to be used throughout the State in the listing, appraising, and assessing of property for taxation. If the board exercises the authority granted by the preceding sentence, it is authorized to make arrangements for the purchase and distribution of approved books and forms through the Division of Purchase and Contract, the cost thereof to be billed to the counties. If the Board does not exercise the authority granted by the first sentence of this section, each county and municipality shall submit the books and forms it proposes to adopt for these purposes to the Board for approval before they are employed.

§ 105-319. Tax records; preparation of scroll and tax book. -- (a) For each year there shall be prepared for each county and tax-levying municipality a scroll (showing property valuations) and a tax book (showing the amount of taxes due) or a combined record (showing both property valuations and taxes due). The governing body of the county or municipality shall have authority to determine whether the tax records shall be prepared in combined form or in a separate scroll and tax book. When used in this subchapter, the term "tax records" shall mean the scroll, tax book, and combined record. No tax records shall be adopted by any county or municipality until they have been approved by the State Board of Assessment.

(b) County tax records shall, unless otherwise authorized by the board of county commissioners, be prepared separately for each township. The tax records of both counties and municipalities shall, unless otherwise authorized by the unit governing body, be divided into two parts:

- (1) Individual taxpayers (including corporate fiduciaries when, in their fiduciary capacity, they list the property of individuals).
- (2) Corporations, partnerships, other business firms, unincorporated associations, and all other taxpayers other than individual persons.

(c) The tax records shall show at least the following information:

- (1) In alphabetical order, the name of each taxpayer whose property is listed and assessed for taxation.
- (2) The assessment of each taxpayer's real property listed for unit-wide taxation (divided into as many categories as the State Board of Assessment may prescribe).

- (3) The assessment of each taxpayer's personal property listed for unit-wide taxation (divided into as many categories as the State Board of Assessment may prescribe).
- (4) The total assessed value of each taxpayer's real and personal property listed for unit-wide purposes.
- (5) The amount of ad valorem tax due by each taxpayer for unit-wide purposes.
- (6) The amount of poll tax due by each taxpayer.
- (7) The amount of dog license tax due by each taxpayer.
- (8) The total assessed value of each taxpayer's real and personal property listed for taxation in any special district or subdivision of the unit.
- (9) The amount of ad valorem tax due by each taxpayer to any special district or subdivision of the unit.
- (10) The amount of penalties, if any, imposed under the provisions of § 105-312.
- (11) The total amount of all taxes and penalties due by each taxpayer to the unit and to special districts and subdivisions of the unit.

(d) Listings and assessments and any changes therein made during the period between the close of the regular listing period and the first meeting of the board of equalization and review, as well as those made during the regular listing period, shall be entered on the county tax records, and the county tax records shall be submitted to the board of equalization and review at its first meeting. Additions and changes made by the board of equalization and review shall be entered on the county tax records in accordance with the provisions of § 105-326. Municipal corporations shall be governed by the provisions of §§ 105-326 through 105-328 with regard to matters dealt with in this subdivision (d).

§ 105-320. Tax receipts; preparation. -- (a) No taxing unit shall adopt a tax receipt form until it has been approved by the State Board of Assessment, and no tax receipt form shall be approved unless it shows at least the following information:

- (1) The name and mailing address of the taxpayer charged with taxes.
- (2) The assessment of the taxpayer's real property listed for unit-wide taxation.
- (3) The assessment of the taxpayer's personal property listed for unit-wide taxation.
- (4) The total assessed value of the taxpayer's real and personal property listed for unit-wide taxation.
- (5) The total assessed value of the taxpayer's real and personal property listed for taxation in any special district or subdivision of the unit.
- (6) The rate of tax levied for each unit-wide purpose, the total rate levied for all unit-wide purposes, and the rate levied for any special district or subdivision of the unit in which the taxpayer's property is subject to taxation. (In lieu of showing this information on the tax receipt, it may be furnished on a separate sheet of paper, properly identified, at the time the official receipt is delivered upon payment).
- (7) The amount of ad valorem tax due by the taxpayer for unit-wide purposes.
- (8) The amount of ad valorem tax due by the taxpayer to any special district or subdivision of the unit.

- (9) The amount of poll tax due by the taxpayer.
- (10) The amount of dog license tax due by the taxpayer.
- (11) The amount of penalties, if any, imposed under the provisions of § 105-312.
- (12) The total amount of all taxes and penalties due by the taxpayer to the unit and to special districts and subdivisions of the unit.
- (13) The amount of discount allowed for prepayment of taxes under the provisions of § 105-360.
- (14) The amount of interest charged for late payment of taxes under the provisions of § 105-360.

(b) The governing body of the county or municipality shall designate the person or persons who shall compute and prepare the tax receipts for all taxes charged upon the tax records.

§ 105-321. Disposition of tax records and receipts; order of collection. --

(a) County tax records shall be filed in the office of the tax supervisor unless the board of county commissioners shall require them to be filed in some other public office of the county. City and town tax records shall be filed in some public office of the municipality designated by the governing body of the city or town. In the discretion of the governing body, a duplicate copy of the tax records may be delivered to the tax collector at the time he is charged with the collection of taxes.

(b) Before delivering the tax receipts to the tax collector in any year, the board of county commissioners or municipal governing body shall adopt and enter in its minutes an order directing the tax collector to collect the taxes charged in the tax records and receipts. A copy of this order shall be delivered to the tax collector at the time the tax receipts are delivered to him, but the failure to do so shall not affect the tax collector's rights and duties to employ the means of collecting taxes provided by this subchapter. The order of collection shall have the force and effect of a judgment and execution against the taxpayers' real and personal property and shall be drawn in substantially the following form:

State of North Carolina

County [or City or Town] of _____

To the Tax Collector of the County [or City or Town] of _____:

You are hereby authorized, empowered, and commanded to collect the taxes set forth in the tax records filed in the office of _____ and in the tax receipts herewith delivered to you, in the amounts and from the taxpayers likewise therein set forth. Such

taxes are hereby declared to be a first lien upon all real property of the respective taxpayers in the County [or City or Town] of _____, and this order shall be a full and sufficient authority to direct, require, and enable you to levy on and sell any real or personal property of such taxpayers, for and on account thereof, in accordance with law.

Witness my hand and official seal, this _____ day of _____, 19__.

_____(Seal)
Chairman, Board of Commissioners of _____
County

[Mayor, City (or Town) of _____]

Attest:

Clerk of Board of Commissioners of _____ County

[Clerk of the City (or Town) of _____]

(c) The original tax receipts, together with any duplicate copies that may have been prepared, shall be delivered to the tax collector by the governing body on or before the first Monday in October each year if the tax collector has made settlement as required by § 105-352. The tax collector shall give his receipt for the tax receipts and duplicates delivered to him for collection.

(d) At the time the tax receipts are delivered to the tax collector, there shall also be delivered to him a list of all appeals pending before the State Board of Assessment affecting property that has been listed and assessed for taxation within the unit.

Article 21.

Review and Appeals of Listings and Valuations.

§ 105-322. County board of equalization and review. -- (a) Personnel. The board of equalization and review of each county shall be composed of the members of the board of county commissioners. However, nothing in this subchapter shall be construed as repealing any law creating a special board of equalization and review or creating any tax commission or board charged with the duties of a board of equalization and review in any county.

(b) Compensation. The board of county commissioners shall fix the compensation and allowances to be paid members of the board of equalization and review for their services and expenses.

(c) Oath. Before entering upon his duties, each member of the board of equalization and review shall take and subscribe the oaths prescribed in §§ 11-6 and 11-7 as well as the following oath and file them with the clerk of the board of county commissioners:

I do solemnly swear (or affirm) that I will faithfully discharge my duties as a member of the Board of Equalization and Review of County, North Carolina, and that I will not allow my actions as a member of said board to be influenced by personal or political friendships or obligations.

.
(Signature)

(d) Clerk and Minutes. The tax supervisor shall serve as clerk to the board of equalization and review, shall be present at all meetings, shall maintain accurate minutes of the actions of the board, and shall give to the board such information as he may have or can obtain with respect to the listing and

valuation of taxable property in the county.

(e) Time of Meeting. Each year the board of equalization and review shall hold its first meeting not earlier than the first Monday in April and not later than the first Monday in May. The board shall complete its duties on or before the third Monday following its first meeting unless, in its opinion, a longer period of time is necessary or expedient to a proper execution of its responsibilities. In no event shall the board sit later than July 1 except to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. From the time of its first meeting until its adjournment, the board shall meet at such times as it deems reasonably necessary to perform its statutory duties and to receive requests and hear the appeals of taxpayers under the provisions of subdivision (g)(2), below.

(f) Notice of Meetings and Adjournment. A notice of the date, hours, place, and purpose of the first meeting of the board of equalization and review shall be published at least three times in some newspaper having general circulation in the county, the first publication to be at least ten days prior to the first meeting. The notice shall also state the dates and hours on which the board will meet following its first meeting and the date on which it expects to adjourn; it shall also carry a statement that in the event of earlier or later adjournment, notice to that effect will be published in the same newspaper. Should a notice be required on account of earlier adjournment, it shall be published at least once in the newspaper in which the first notice was published, such publication to be at least five days prior to the date fixed for adjournment. Should a notice be required on account of later adjournment, it shall be published at least once in the newspaper in which the first notice

was published, such publication to be prior to the date first announced for adjournment.

(g) Powers and Duties.

- (1) It shall be the duty of the board of equalization and review to examine and review the tax lists of the county for the current year to the end that all taxable property shall be listed on the abstracts and tax records of the county and appraised according to the standard required by § 105-283, and the board shall correct the abstracts and tax records to conform to the provisions of this subchapter. In carrying out its responsibilities under this subdivision (g)(1), the board, on its own motion or on sufficient cause shown by any person, shall:
 - a. List, appraise, and assess any taxable real or personal property or poll that has been omitted from the tax lists.
 - b. Correct all errors in the names of persons and in the description of properties subject to taxation.
 - c. Increase or reduce the appraised value of any property that, in the board's opinion, shall have been listed and appraised at a figure that is below or above the appraisal required by § 105-283; however, the board shall not change the appraised value of any real property from that at which it was appraised for the preceding year except in accordance with the terms of §§ 105-286 and 105-287.
 - d. Cause to be done whatever else shall be necessary to make the lists and tax records comply with the provisions of this subchapter.

- e. Embody actions taken under the provisions of subdivisions (g)(1)a through (g)(1)d, above, in appropriate orders and have the orders entered in the minutes of the board.
 - f. Give written notice to the taxpayer at his last-known address in the event the board shall, by appropriate order, increase the appraisal of any property or list for taxation any property omitted from the tax lists under the provisions of this subdivision (g)(1).
- (2) On request, the board of equalization and review shall hear any taxpayer who owns or controls property taxable in the county with respect to the listing or appraisal of his property or the property of others.
- a. A request for a hearing under this subdivision (g)(2) shall be made in writing to or by personal appearance before the board prior to its adjournment. However, if the taxpayer requests review of a decision made by the board under the provisions of subdivision (g)(1), above, notice of which was mailed fewer than fifteen days prior to the board's adjournment, the request for a hearing thereon may be made within fifteen days after the notice of the board's decision was mailed.
 - b. Taxpayers may file separate or joint requests for hearings under the provisions of this subdivision (g)(2) at their election.
 - c. At a hearing under the provisions of this subdivision (g)(2), the board, in addition to the powers it may exercise under

the provisions of subdivision (g)(3), below, shall hear any evidence offered by the appellant, the tax supervisor, and other county officials that is pertinent to the decision of the appeal. Upon the request of an appellant, the board shall subpoena witnesses or documents if there is a reasonable basis for believing that the witnesses have or the documents contain information pertinent to the decision of the appeal.

- d. On the basis of its decision after any hearing conducted under this subdivision (g)(2), the board shall adopt and have entered in its minutes an order reducing, increasing, or confirming the appraisal appealed or listing or removing from the tax lists the property whose omission or listing has been appealed. The board shall notify the appellant as to the action taken on his appeal not later than thirty days after the board's adjournment.

(3) In the performance of its duties under subdivisions (g)(1) and (g)(2), above, the board of equalization and review may exercise the following powers:

- a. It may appoint committees composed of its own members or other persons to assist it in making investigations necessary to its work. It may also employ expert appraisers in its discretion. The expense of the employment of committees or appraisers shall be borne

by the county. The board may, in its discretion, require the taxpayer to reimburse the county for the cost of any appraisal by experts demanded by him if the appraisal does not result in material reduction of the valuation of the property appraised and if the appraisal is not subsequently reduced materially by the board or by the State Board of Assessment.

- b. The board, in its discretion, may examine any witnesses and documents. It may place any witnesses under oath administered by any member of the board. It may subpoena witnesses or documents on its own motion, and it must do so when a request is made under the provisions of subdivision (g)(2)c, above.

A subpoena issued by the board shall be signed by the chairman of the board, directed to the witness or to the person having custody of the document, and served by an officer authorized to serve subpoenas. Any person who willfully fails to appear or to produce documents in response to a subpoena or to testify when appearing in response to a subpoena shall be guilty of a misdemeanor and punished by a fine or by imprisonment or by both in the discretion of the court.

§ 105-323. Giving effect to decisions of the board of equalization and review. -- All changes in listings, names, descriptions, appraisals, and assessments made by the board of equalization and review shall be reflected upon the abstracts and tax records by insertion of rebates given, additional charges made, or any other insertion; by correction; or by any other charge. The tax records shall then be totalled, and at least a majority of the members of the board of equalization and review shall sign the following statement to be inserted at the end of the tax records:

State of North Carolina

County of _____

We, the undersigned members of the Board of Equalization and Review of _____ County, hereby certify that these tax records constitute the fixed and permanent tax list and assessment roll and record of taxes due for the year 19__, subject to only such changes as may be allowed by law.

Members of the Board of Equalization
and Review of _____ County

The omission of this endorsement shall not affect the validity of the tax records or of any taxes levied on the basis of the assessments appearing in them.

§ 105-324. Appeals to State Board of Assessment from listing and valuation decisions of boards of equalization and review and boards of county commissioners. --

(a) The provisions of this section shall govern appeals from listing and valuation decisions of boards of equalization and review and boards of county commissioners made under the provisions of §§ 105-286, 105-287, 105-322, 105-325, and 105-312.

(b) Any property owner of a county or member of the board of county commissioners or board of equalization and review may except to an order of the board of equalization and review entered under the provisions of § 105-286, § 105-287, § 105-322, or § 105-312 and appeal therefrom to the State Board of Assessment. To perfect an appeal the appellant or appellants shall, within sixty days after the board of equalization and review has entered the listing or valuation order challenged, file a written notice of appeal and a written statement of the grounds of appeal with the clerk of the board of county commissioners and with the State Board of Assessment. Upon timely appeal, the State Board of Assessment shall proceed under the provisions of § 105-290(b).

(c) Any property owner of the county or member of the board of county commissioners may except to an order of the board of county commissioners entered under the provisions of § 105-287, § 105-325, or § 105-312 and appeal therefrom to the State Board of Assessment. To perfect an appeal the appellant or appellants shall, within sixty days after the board of county commissioners has entered the listing or valuation order challenged, file a written notice of appeal and a written statement of the grounds of appeal with the clerk of the board of county commissioners and with the State Board of Assessment. Upon timely appeal, the State Board of Assessment shall proceed under the provisions of § 105-290(b).

§ 105-325. Powers of board of county commissioners to change abstracts and tax records after board of equalization and review has adjourned. --

(a) After the board of equalization and review has finished its work and the changes it effected or ordered have been entered on the abstracts and tax records as required by § 105-323, the board of county commissioners shall not authorize any changes to be made on the abstracts and tax records except as follows:

- (1) To give effect to decisions of the State Board of Assessment on appeals taken under § 105-324.
- (2) To add to the tax records any valuation certified by the State Board of Assessment for property appraised and assessed in the first instance by the Board or to give effect to corrections made in such appraisals and assessments by the Board.
- (3) Subject to the provisions of subdivisions (a)(3)a and (a)(3)b, below, to correct the name of any taxpayer appearing on the abstract or tax records erroneously; to substitute the name of the person who should have listed property for the name appearing on the abstract or tax records as having listed the property; and to correct an erroneous description of any property appearing on the abstract or tax records.
 - a. Any correction or substitution made under the provisions of this subdivision (a)(3) shall have the same force and effect as if the name of the taxpayer or description of the property had been correctly listed in the first instance, but the provisions of this subdivision (a)(3)a shall not be construed as a limitation on the taxation and penalization of discovered property required by § 105-312.

- b. If a correction or substitution under this subdivision (a)(3) will adversely affect the interests of any taxpayer, he shall be given written notice thereof and an opportunity to be heard before the change is entered on the abstract or tax records.
- (4) To correct appraisals, assessments, and amounts of taxes appearing erroneously on the abstracts or tax records as the result of clerical or mathematical errors. (If the clerical or mathematical error was made by the taxpayer, his agent, or an officer of the taxpayer and if the correction demonstrates that the property was listed at a substantial understatement of value, quantity, or other measurement, the provisions of § 105-312 shall apply.)
- (5) To add to the tax records and abstracts or to correct the tax records and abstracts to include property discovered under the provisions of § 105-312.
- (6) Subject to the provisions of subdivisions (a)(6)a, (a)(6)b, (a)(6)c, and (a)(6)d, below, to appraise or reappraise property when the tax supervisor reports to the board that, since adjournment of the board of equalization and review, facts have come to his attention that render it advisable to raise or lower the appraisal of some particular property of a given taxpayer for taxation in the then current calendar year.
- a. The power granted by this subdivision (a)(6) shall not authorize appraisal or reappraisal because of events or circumstances that have taken place or arisen since the day as of which property is to be listed.

- b. No appraisal or reappraisal shall be made under the authority of this subdivision (a)(6) unless it could have been made by the board of equalization and review had the same facts been brought to the attention of that board.
- c. If a reappraisal made under the provisions of this subdivision (a)(6) demonstrates that the property was listed at a substantial understatement of value, quantity, or other measurement, the provisions of § 105-312 shall apply.
- d. If an appraisal or reappraisal made under the provisions of this subdivision (a)(6) will adversely affect the interests of any taxpayer, he shall be given written notice thereof and an opportunity to be heard before the appraisal or reappraisal shall become final.

(b) The board of county commissioners may give the tax supervisor general authority to make any changes authorized by subdivision (a), above, except those permitted under subdivision (a)(6), above.

(c) Orders of the board of county commissioners and actions of the tax supervisor upon delegation of authority to him by the board that are made under the provisions of this section may be appealed to the State Board of Assessment under the provisions of § 105-324(c).

Article 22.

Listing, Appraising, and Assessing by Cities and Towns.

§ 105- 326. Listing property for city and town taxation; duty of owner; authority of governing body to obtain lists from county. -- (a) All property subject to ad valorem taxation in any city or town shall be listed annually during the period prescribed by § 105-307 in the city or town in which it is taxable in the name of the person required by §§ 105-302 and 105-306 on an abstract prepared according to § 105-309 and affirmed as required by § 105-310. In lieu of requiring property owners to list their property with the city or town, the governing body of any city or town may make provision for obtaining from the abstracts and tax records of the county in which the municipality is situated lists of the property subject to taxation by the city or town.

(b) Regardless of whether a city or town adopts the alternative provided in the second sentence of subdivision (a), above, the provisions of §§ 105-311 and 105-312 shall apply to the listing of property for municipal taxation, as shall the penalties imposed by §§ 105-308 and 105-312 for failure to list. In the preparation of abstracts, tax records, and tax receipts the city or town shall be governed by the provisions of §§ 105-318, 105-319, 105-320, and 105-321. The powers and duties assigned to the tax supervisor by the statutes cited as being applicable to municipalities shall be imposed upon and exercised by some official designated by the governing body of the city or town, and the powers and duties assigned therein to the board of county commissioners shall be imposed upon and exercised by the governing body of the city or town.

§ 105- 327. Appraisal and assessment of property subject to city and town taxation. -- For the property it is entitled to tax, a city or town situated in a single county shall accept and adopt the appraisals and assessments fixed by the authorities of that county as modified by the State Board of Assessment under the provisions of this subchapter. However, the requirement of this section shall not be construed to modify the appraisal and assessment authority given cities and towns with respect to discovered property by § 105- 312.

§ 105-328. Listing, appraisal, and assessment of property subject to taxation by cities and towns situated in more than one county. -- (a) For purposes of municipal taxation, all property and polls subject to taxation by a city or town situated in two or more counties may, by resolution of the governing body of the municipality, be listed and appraised as provided in §§ 105-326 and 105-327. In such a case, the governing body may also adopt the assessments placed upon the property by the counties in which the city or town is situated if, in the opinion of the governing body, the same appraisal and assessment standards will thereby apply uniformly throughout the municipality. If the governing body shall determine that adoption of the assessments fixed by the counties will not result in uniform appraisals and assessments throughout the municipality, the governing body may, by horizontal adjustments, equalize the appraisal values fixed by the counties and then, in accordance with the procedure prescribed by § 105-284, select and adopt an assessment ratio to be applied to the appraised values of property subject to municipal taxation as equalized by the governing body. Taxes levied by the city or town shall be levied uniformly on the assessments so determined.

(b) Should the governing body of a city or town situated in two or more counties not adopt the procedure provided in subdivision (a), above, all property and polls subject to taxation by the municipality shall be listed, appraised, and assessed as provided in subdivisions (b)(1) through (b)(6), below.

- (1) The governing body of the city or town shall appoint a municipal tax supervisor on or before the first Monday in July in each odd-numbered year. The governing body may remove the municipal tax supervisor from office during his term for good cause shown

after giving him notice in writing and an opportunity to appear and be heard at a public session of the appointing body. Whenever a vacancy occurs in the office, the governing body shall appoint a qualified person to serve as municipal tax supervisor for the period of the unexpired term. Persons holding the position of municipal tax supervisor on the effective date of this act shall be deemed qualified to fill the position. Any other person selected thereafter shall be one whose experience in the appraisal of real and personal property is satisfactory to the governing body and whose qualifications have been certified by the State Board of Assessment as provided in § 105-289(e).

- (2) With the approval of the governing body, the municipal tax supervisor may appoint such list takers and assistants as may be required to perform the work assigned them by law.
- (3) The municipal tax supervisor, list takers, and assistants shall, with respect to property subject to city or town taxation, have the powers and duties accorded the county tax supervisor, list takers, and assistants by this subchapter.
- (4) The governing body shall, with respect to property subject to city or town taxation, be vested with the powers and duties vested by this subchapter in boards of county commissioners and boards of equalization and review. Appeals may be taken from the municipal board of equalization and review or governing body to the State Board of Assessment in the manner provided in this subchapter for appeals from county boards of equalization and review and boards of county commissioners.
- (5) All expenses incident to the listing, appraisal, and assessment of property for the purpose of city or town taxation shall be

borne by the municipality for whose benefit the work is undertaken.

- (6) The intent of this subdivision (b) is to provide cities and towns that are situated in two or more counties with machinery for listing, appraising, and assessing property and polls for municipal taxation equivalent to that established by this subchapter for counties. The powers to be exercised by, the duties imposed on, and the possible penalties against municipal governing bodies, boards of equalization and review, tax supervisors, list takers, and assistants shall be the same as those provided in this subchapter by, on, or against county boards of commissioners, boards of equalization and review, tax supervisors, list takers, and assistants.

§§ 105-329 to 105-332:

Reserved for future codification purposes.

Article 23.

Public Service Companies.

§ 105-333. Definitions. -- When used in this article (unless the context requires a different meaning):

- (1) "Public service company" means railroad company, express company, pipe line company, gas company, electric power company, electric membership corporation, telephone company, telegraph company, water company, bus line company, motor freight carrier company, airline company, and any other company performing a public service that is regulated by the Interstate Commerce Commission, the Federal Power Commission, the Federal Communications Commission, the Federal Aviation Commission, or the North Carolina Utilities Commission. (For purposes of appraisal under this article, this definition shall include a pipeline company whether or not it performs a public service and whether or not it is regulated by one of the agencies named in the preceding sentence.)
- (2) "Railroad company" means a public service company engaged in the business of operating a railroad (either wholly or partially within this State) on rights of way acquired or leased and held exclusively by the company or otherwise.
- (3) "Express company" means a public service company engaged in the business of conveying to, from, or through this State or a part thereof, money, merchandise, or other articles and commodities by express [but not including a motor freight carrier company as defined in subdivision (12), below].
- (4) "Pipeline company" means a public service company engaged in the business of transporting natural gas, petroleum products, or other products through pipelines to, from, within, or through this State, or having control of pipelines for such a purpose.

- (5) "Gas company" means a public service company engaged in the business of supplying artificial or natural gas to, from, within, or through this State through pipe or tubing for light, heat, or power to consumers in this State.
- (6) "Electric power company" means a public service company engaged in the business of supplying electricity for light, heat, or power to consumers in this State.
- (7) "Electric membership corporation" means a public service company organized, reorganized, or domesticated under the provisions of Chapter 117 of the General Statutes which is engaged in the business of supplying electricity for light, heat, or power to consumers in this State.
- (8) "Telephone company" means a public service company engaged in the business of transmitting telephone messages and conversations to, from, within, or through this State.
- (9) "Telegraph company" means a public service company engaged in the business of transmitting telegraph messages to, from, within, or through this State.
- (10) "Water company" means a public service company engaged in the business of supplying water through pipes or tubing to consumers in this State.
- (11) "Bus line company" means a public service company engaged in the business of transporting passengers and property by motor vehicle for hire over the public highways of this State (but not including a bus line company operating primarily upon the public streets within a single local taxing unit), whether the transportation be within, into, or from this State.

- (12) "Motor freight carrier company" means a public service company engaged in the business of transporting property by motor vehicle for hire over the public highways of this State, whether the transportation be within, into, or from this State.
- (13) "Airline company" means a public service company engaged in the business of transporting passengers and property by aircraft for hire within, into, or from this State.
- (14) "System property" means the real property and tangible and intangible personal property used by a public service company in its public service activities.
- (15) "Non-system property" means the real property and tangible and intangible personal property (except that assessed under Schedule H of the Revenue Act) owned by a public service company but not used in its public service activities.
- (16) "Non-distributable system property" means the following properties owned by a railroad company: land other than right-of-way; depots; machine shops; warehouses; office buildings; other structures; and the contents of the structures in this listing.
- (17) "Distributable system property" means all real property and tangible and intangible personal property other than non-distributable system property owned or used by a railroad company.
- (18) "Rolling stock" means motor vehicles, machines, buses, trucks, tractor trucks, trailers, semi-trailers, or combinations thereof, and locomotives or cars, which are propelled by mechanical or electrical power and used upon the highways or, in the case of railroads, upon tracks.
- (19) "Flight equipment" means aircraft fully equipped for flying and used in any operation within this State.

§ 105-334. Duty to file report; penalty for failure to file. -- (a) Every public service company whose property is subject to taxation in this State, whether incorporated under the laws of the State or any other state or any foreign nation, shall prepare and deliver to the State Board of Assessment each year a report showing (as of January 1) such information with regard to the property it owns and the system property it leases as the State Board of Assessment may by regulation prescribe. This report shall be filed on or before the last day of March, and the following affirmation, which shall be annexed to the report, shall be signed by a principal officer of the public service company making the report:

Under penalties prescribed by law, I hereby affirm that
to the best of my knowledge and belief this report, including
any accompanying statements, inventories, schedules, and other
information, is true and complete.

(b) Any individual who willfully subscribes a report required by this section which he does not believe to be true and correct as to every material matter shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine not to exceed \$500 or imprisonment not to exceed six months.

(c) The Board may grant reasonable extensions for filing the required reports for good cause shown.

(d) The Board may require any additional reports or information it deems necessary to properly carry out its duties under this article.

(e) The provisions of §§ 105-291 and 105-312 are made specifically applicable to all proceedings taken under this article.

§ 105-335. Appraisal of property of public service companies. -- (a) Duty to Appraise. In accordance with the provisions of subdivision (b), below, the State Board of Assessment shall appraise for taxation the true value of each public service company (other than bus line, motor freight carrier, and airline companies) as a system (both inside and outside this State). Certain specified properties of bus line, motor freight carrier, and airline companies shall be appraised by the Board in accordance with the provisions of subdivision (c), below, and all other properties of such companies shall be listed, appraised, and assessed in the manner prescribed by this subchapter for the properties of taxpayers other than public service companies.

(b) Property of Public Service Companies Other than Those Noted in Subdivision (c).

- (1) System Property. Each year, as of January 1, the State Board of Assessment shall appraise at its true value (as defined in § 105-283) the system property owned or leased by each public service company both inside and outside this State. In making this appraisal, the Board shall be governed by the provisions of § 105-336, and in determining the portion of the total value of the company's system property subject to taxation in this State the Board shall adhere to the provisions of § 105-337.
- (2) Non-System Personal Property. Each year, as of January 1, the State Board of Assessment shall appraise at its true value (as defined in § 105-283) each public service company's non-system personal property (except that assessed under Schedule H of the Revenue Act) subject to taxation in this State.
- (3) Non-System Real Property. In accordance with the county in which located and the schedules set out in §§ 105-286 and 105-287, the

State Board of Assessment shall appraise at its true value (as defined in § 105-283) each public service company's non-system real property subject to taxation in this State.

(c) Property of Bus Line, Motor Freight Carrier, and Airline Companies.

- (1) Rolling Stock. Each year, as of January 1, the State Board of Assessment shall appraise at its true value (as defined in § 105-283) the rolling stock owned or leased by or operated under the control of each bus line and motor freight carrier company that is domiciled in this State or that is regularly engaged in business in this State at some premises occupied by the owner or its agent. In making this appraisal, the Board shall be governed by the provisions of § 105-336, and in determining the portion of the total value of the company's rolling stock subject to taxation in this State the Board shall adhere to the provisions of § 105-337.
- (2) Flight Equipment. Each year, as of January 1, the State Board of Assessment shall appraise at its true value (as defined in § 105-283) the flight equipment owned or leased by or operated under the control of each airline company that is domiciled in the State or that is regularly engaged in business at some airport in this State. In making this appraisal, the Board shall be governed by the provisions of § 105-336, and in determining the portion of the total value of the company's flight equipment subject to taxation in this State the Board shall adhere to the provisions of § 105-337.

§ 105-336. Methods of appraising certain properties of public service companies. -- (a) Appraising System Property of Public Service Companies Other than Those Noted in Subdivision (b). In determining the true value of each public service company [other than one covered by subdivision (b), below] as a system the State Board of Assessment shall give consideration to the following:

- (1) The market value of the company's capital stock and debt.
- (2) The book value of the company's system property as reflected in the books of account kept under the regulations of the appropriate federal or state regulatory agency and what it would cost to replace or reproduce the system property in its existing condition.
- (3) The gross receipts and operating income of the company.
- (4) Any other factor or information that in the judgment of the Board has a bearing on the true value of the company's system property.

(b) Appraising Rolling Stock and Flight Equipment. In determining the true value of the rolling stock of bus line and motor freight carrier companies and the flight equipment of airline companies, the State Board of Assessment shall consider the book value of the property as reflected in the books of account kept under the regulations of the appropriate federal or state regulatory agency and what it would cost to replace or reproduce the property in its existing condition.

§ 105-337. Apportionment of taxable values to this State. -- With respect to any public service company operating both inside and outside this State, it shall be the duty of the State Board of Assessment to apportion for taxation in this State a fair and reasonable share of the value of the company as a system or its rolling stock or flight equipment as appraised under the provisions of § 105-336. Thus, when the Board has determined true value in accordance with the provisions of § 105-336(a) or § 105-336(b), it shall ascertain the portion of the total value subject to taxation in this State by applying property, business, and mileage factors thereto in accordance with the ratio that the company's property, business, or mileage in this State bears to its total property, business, or mileage. In its discretion, the Board may use one or more of the factors listed in the preceding sentence in order to achieve a fair and accurate result in the apportionment of the value of the property of any public service company. As used in this section,

- (1) The term "property factor" means investment in property; it may be either gross or net investment or any other reasonable figure reflecting the company's investment in property.
- (2) The term "business factor" means data that reflect the use of the company's property, such as gross revenue, net income, tons of freight carried, revenue ton miles, passenger miles, car miles, ground hours, and comparable data.
- (3) The term "mileage factor" means factual information as to the linear miles of the company's track, wire, lines, pipes, routes, and similar operational routes.

§ 105-338. Allocation of appraised valuation of system property among local taxing units. -- (a) State Board's Duty. For purposes of taxation by local taxing units in this State, the State Board of Assessment shall allocate the valuations of public service company property among the local taxing units in accordance with the provisions of this section.

(b) System Valuation of Companies Other Than Those Noted in Subdivision (c).

(1) System Property of Railroad Companies. The appraised valuation of the distributable system property of a railroad shall be allocated for taxation to the local taxing units in accordance with the ratio of the miles of all the company's lines in the local taxing unit to the total miles of all the company's lines in this State, adjusted to reflect traffic density in the local taxing unit in terms of revenue ton miles and revenue passenger miles per mile of road.

(2) System Property of Telephone Companies.

a. The State Board of Assessment shall divide each telephone company's system property in this State into the following two classes and shall determine the original cost of that property and the percentage thereof represented by the property in each of the two classes.

-- Class 1: Property located in this State that is identified under the applicable uniform system of accounts as central office equipment, large P.B.X. equipment, motor vehicles, tools and work equipment, office furniture and equipment, materials and supplies, and land and buildings.

-- Class 2: Property located in this State that does not come within Class 1.

The State Board of Assessment shall then apply the percentages obtained in accordance with this subdivision to the appraised valuation of the company's system property and thereby derive the proportions of appraised valuation to be allocated as Class 1 and Class 2 valuations to local taxing units in accordance with subdivision (b)(2)b, below.

- b. Having made the division required by subdivision (b)(2)a, above, the State Board of Assessment shall allocate the appraised valuation of the properties in each class among the local taxing units of the State as follows:

-- Class 1: The appraised valuations of property in this class shall be allocated among the local taxing units in which such property of the company is situated on January 1 in the proportion that the original cost of such property in the taxing unit bears to the original cost of all such property in this State.

-- Class 2: The appraised valuations of property in this class shall be allocated among the local taxing units in which the company operates in the proportion that the miles of the company's single aerial wire and single wire in cable (including single tube in co-axial cable) in the taxing unit bears to the total of such wire miles of the company in this State.

- (3) System Property of Other Companies Appraised by the State Board of Assessment.

- a. The provisions of this subdivision (b)(3) shall govern the

allocation of the property of all companies appraised by the State Board of Assessment except railroad, telephone, bus line, motor freight carrier, and airline companies.

- b. The appraised valuation of the system property of such a company shall be allocated for taxation to the local taxing units in which the company operates in the proportion that the original cost of the taxable system property in the local taxing unit on January 1 bears to the original cost of all the taxable system property in this State.

(c) Property of Bus Line, Motor Freight Carrier, and Airline Companies.

- (1) The appraised valuation of a bus line's rolling stock (other than that locally assigned) shall be allocated for taxation to each local taxing unit according to the ratio of the company's gross operating revenue from passengers and freight in each such unit for the calendar year preceding January 1 to the company's total gross operating revenue from passengers and freight in the State for the same period.
- (2) The appraised valuation of a motor freight carrier company's rolling stock (other than that locally assigned) shall be allocated for taxation to each local taxing unit in which the company has a terminal according to the ratio of the tons of freight handled in the calendar year preceding January 1 at the company's terminals within the taxing unit to the total tons of freight handled by the company in this State in the same period. If the company has no terminal in this State but the owner of the rolling stock resides in this State or the company has a principal place of business in this State, then the total of the appraised valuation shall be allocated to the taxing unit in which the owner resides or the company has its principal

place of business. If the company has no terminal in this State and no principal place of business in this State and the owner of the rolling stock does not reside in this State, the appraised valuation shall be allocated to the taxing units in which the company operates according to the ratio of the tons of freight handled during the year preceding January 1 at the premises at which the company regularly conducts business in the taxing unit to the total tons of freight handled by the company in this State in the same period.

- (3) The appraised valuation of an airline company's flight equipment shall be allocated for taxation to each local taxing unit in which an airport used by the company is situated according to the ratio obtained by averaging the following two ratios: the ratio of the company's ground hours in the taxing unit in the year preceding January 1 to the company's ground hours in the State in the same period, and the ratio of the company's gross revenue in the taxing unit in the year preceding January 1 to the company's gross revenue in the State in the same period.

§ 105-339. Certification of appraised valuations of non-system property. --

Having determined the appraised valuations of the non-system properties of public service companies and the appraised valuations of locally assigned rolling stock in accordance with subdivisions (b) (2) and (b) (3) of § 105-335, the State Board of Assessment shall assign those appraised valuations to the taxing units in which such properties are located by certifying the valuations to the tax supervisors of the appropriate counties and to the clerks of the appropriate municipalities. Each local taxing unit to which appraised valuations are certified in accordance with this section shall apply to such valuations its assessment ratio adopted pursuant to § 105-284 and shall tax the assessed valuations thus obtained at the rate of tax levied against other property subject to taxation therein.

§ 105-340. Certification of appraised valuations of railroad companies. --

(a) Having determined the appraised valuation of the "non-distributable" system property of a railroad company, the State Board of Assessment shall assign the valuations for taxation to the local taxing units in which such property is situated in the same manner as is provided for non-system property in § 105-339.

(b) Having determined the appraised valuation of the system property of a railroad company and having allocated the valuations in accordance with § 105-338 (b)(1), the State Board of Assessment shall deduct therefrom the appraised valuations of all non-distributable system property certified to the local taxing units and shall then certify any remaining amounts to the local taxing units to which such amounts are due in accordance with the provisions of § 105-341.

§ 105-341. Certification of public service company system appraised valuations. -- Having determined the appraised valuations of public service company systems which are to be appraised in accordance with subdivision (b)(1) of § 105-335 and having allocated the valuations in accordance with § 105-338(b)(2) and (3), the State Board of Assessment shall assign each local taxing unit's appraised valuations by certifying them to the tax supervisors of the appropriate counties and to the clerks of the appropriate municipalities. Each local taxing unit to which valuations are certified in accordance with this section shall apply to such valuations its assessment ratio adopted pursuant to § 105-284 and shall tax the assessed valuations thus obtained at the rate of tax levied against other property subject to taxation therein.

§ 105-342. Notice, hearing, and appeal. -- (a) Right to Information. Upon written request to the State Board of Assessment, any public service company whose property is subject to appraisal, apportionment, allocation, and distribution under this article shall be entitled to be informed of the elements that the Board considered in the appraisal of the company's property, the factors the Board used in apportioning the appraised valuation of the company's property to this State, and the factors the Board used in allocating the company's valuation among the local taxing units of this State. Upon written request to the State Board of Assessment, any local taxing unit in this State shall be entitled to the same information with regard to any public service company whose property is subject to appraisal, apportionment, allocation, and distribution under this article.

(b) Appraisal and Apportionment Review. The appraised valuation of a public service company's property and the share thereof apportioned for taxation in this State under §§ 105-335, 105-336, and 105-337 shall be deemed tentative figures until the provisions of this subdivision (b) have been complied with. As soon as practicable after the tentative figures referred to in the preceding sentence have been determined, the State Board of Assessment shall give the taxpayer written notice of the proposed figures, stating in the notice that the taxpayer shall have ten days from the date on which the notice was mailed in which to submit a written request to the Board for a hearing on the tentative appraisal or apportionment or both. If a timely request for a hearing is not made, the tentative figures shall become final and conclusive. If a timely request is made, the Board shall fix a date and place for the requested hearing and give the taxpayer written notice thereof. The hearing shall be conducted under the provisions of subdivision (c), below.

(c) Hearing and Appeal. At any hearing under this section the State Board of Assessment shall hear all evidence and affidavits offered by the taxpayer and may exercise the authority granted by § 105-290(d) to obtain information pertinent to

decision of the issue. The Board shall make findings of fact and conclusions of law and issue an order embodying its decision. As soon as practicable thereafter the Board shall serve a written copy of its decision upon the taxpayer by personal service or by registered mail, return receipt requested. The taxpayer shall have thirty days after the date on which the notice is served in which to seek judicial review of the Board's decision under the provisions of §143-306, et seq.

§ 105-343. Penalty for failure to make required reports. -- Any public service company which fails or refuses to prepare and deliver to the State Board of Assessment any report required by this article shall forfeit and pay to the State of North Carolina one hundred dollars (\$100.00) for each day the report is delayed beyond the date on which it is required to be submitted. This penalty may be recovered in an action in the appropriate division of the General Court of Justice of Wake County in the name of the State on the relation of the State Board of Assessment. When collected, the penalty shall be paid into the general fund of the State. The Board shall have the power to reduce or waive the penalty provided in this section for good cause.

§ 105-344. Failure to pay tax; remedies; penalty. -- If any public service company fails or refuses to pay any taxes imposed on its property by any taxing unit of this State, the taxing unit may bring an action in the appropriate division of the General Court of Justice of the county in which the taxing unit is located for the recovery of the tax. The judgment rendered in such an action shall include the tax imposed and unpaid and, as an additional tax, a penalty of fifty percent (50%) of the amount of the tax with interest thereon at the rate of six percent (6%) per annum from the date the tax was due to be paid, plus reasonable attorneys' fees for the prosecution of the action to be fixed by the court. (The awarding of attorneys' fees by the court shall not prevent the taxing unit from paying its attorney an additional fee pursuant to contract, nor shall it prevent the taxing unit from requiring that the attorneys' fees awarded by the court be paid into the general fund of the taxing unit in accordance with any arrangement between the taxing unit and its attorneys.) The judgment rendered by the court may include a mandamus ordering the payment of the judgment, penalty, interest, and costs, including the attorneys' fees as part of the costs.

If, during the pendency of an action brought under this section, additional or subsequent taxes shall accrue, those taxes, together with penalties and interest, may be included in the judgment if, prior to rendition of the judgment, the tax collector of the taxing unit files with the court a certificate of the additional taxes, penalties, and interest.

In any action brought under this section, the appraised valuation of the taxpayer's property as determined, allocated, and certified to the taxing unit by the State Board of Assessment shall be conclusive and shall not be subject to collateral attack.

Article 24.

Poll Tax.

§ 105-345. Poll or capitation tax. -- (a) Levy. The board of county commissioners of each county shall annually levy a poll or capitation tax of two dollars (\$2.00) on each male resident of the county who is over twenty-one and under fifty years of age on January 1. The governing body of each city and town may levy a similar tax not exceeding one dollar (\$1.00) upon such persons who are residents of the city or town.

(b) Application of proceeds of tax. The poll taxes levied and collected by a county shall be for the benefit of the public school fund and the poor of the county, but not more than twenty-five percent (25%) of the proceeds shall be applied to the latter purpose. Poll taxes levied and collected by a city or town may be used for any purpose permitted by law.

(c) Listing. Each male person between the ages of twenty-one and fifty on January 1 shall list annually for the poll tax in the county of his residence in accordance with the provisions of this subchapter controlling the listing of personal property. If a male person between the prescribed ages resides in a city or town imposing such a tax and the city or town in which he resides requires separate listing, he shall also list for this tax in the city or town.

(d) Penalties for failure to list. If a person whose duty it is to list for poll tax fails to list during the regular listing period of any year, he shall be liable to the penalty for failure to list prescribed in § 105-308. In addition, the provisions of § 105-312, insofar as they may be applied, shall govern the listing, taxation, and penalization of discovered polls. In determining the penalty provided by that section, the amount of the taxes on a discovered poll shall be added to the amount of taxes

on discovered property, and the penalty shall be computed on the total figure. In the event that no taxes are due on discovered property, the penalty on the discovered poll shall be \$1 for the earliest year in which the poll was not listed plus an additional \$1 for each subsequent listing period that elapsed before the poll was discovered. This penalty shall be computed separately for each year in which a failure to list the poll occurred, and the year, the amount of the poll tax for that year, and the total of penalties for failure to list in that year shall be shown separately, but the poll taxes and penalties for all years in which there was a failure to list the poll shall be totalled on a single tax receipt. For purposes of tax collection, this total figure shall be deemed to be a tax for the fiscal year beginning on July 1 of the calendar year in which the poll was discovered. The schedule of discounts for prepayment and interest for late payment applicable to taxes for the fiscal year referred to in the preceding sentence shall apply when the total figure on the single tax receipt is paid.

(e) Exemptions.

- (1) Members of the armed forces of the United States shall not be liable to poll taxes levied under this section.
- (2) The board of county commissioners or the governing body of a city or town may on the basis of any person's poverty or infirmity exempt that person from payment of the poll tax it levies, and the exemption shall remain in force until revoked. The clerk of the board of county commissioners or municipality shall furnish each exempted person a certificate of poll tax exemption. Each exempted person shall list annually as required by sub-

division (c), above, but upon exhibiting an exemption certificate, the word "exempt" shall be entered upon his abstract and upon the tax records in the space provided thereon for the poll tax.

§ 105-346. Certain veterans exempted from poll tax. -- (a) Presumption.

Any honorably discharged veteran of the armed forces of the United States who was in service during any of the periods of war defined in subdivision (c), below, and who meets the requirements of subdivision (b), below, shall be conclusively presumed to have an infirmity serious enough to justify the governing body of a taxing unit in exempting him from payment of poll tax under the authority granted in Article V, Section 1, of the Constitution of North Carolina and, upon complying with the provisions of subdivision (d), below, shall be exempted from poll tax.

(b) Qualifying Disabilities. A qualifying veteran shall be entitled to the exemption allowed by subdivision (a), above, if:

- (1) He received injuries in line of duty in military service, whether or not the injuries are compensable; or
- (2) He is or has been receiving compensation from the federal government for a disability of service-connected origin.

(c) Periods of War. For purposes of the presumption established by subdivision (a), above, the periods of war shall be those defined below:

- (1) World War II, which shall mean the period beginning on December 7, 1941, and ending on December 31, 1946.
- (2) The Korean Conflict, which shall mean the period beginning June 27, 1950, and ending on January 31, 1955.
- (3) The Viet Nam Era, which shall mean the period beginning on August 5, 1964, and ending on such date as shall be prescribed by Presidential proclamation or concurrent resolution of the Congress.

(d) Proof of Service, Discharge, and Injury or Disability.

- (1) A veteran claiming the presumption established by subdivision (a), above, shall furnish proof of his service in the armed forces during a period of war, of his honorable discharge, and of his injury or disability by registering his discharge or release papers and certificate of injury or disability with the register of deeds of the county in which he resides prior to the tax listing date of the year for which the presumption is first claimed.
- (2) On or before each annual tax listing date, the register of deeds shall notify the governing body of the county and the governing body of each municipality within the county of the registration in his office of the records described in subdivision (d)(1), above.

Article 25.

Levy of Taxes and Presumption of Notice.

§ 105-347. Levy of property taxes. -- Each year -- not later than the date prescribed by applicable law or, in the absence of specific statutory provisions, not later than the first day of August -- the tax levying authorities of counties and municipalities shall levy on property rates of taxes, not exceeding any constitutional or statutory limits, necessary to meet the general and other legally authorized expenses of the taxing units.

§ 105- 348. All interested persons charged with notice of taxes. --

All persons who have or who may acquire any interest in any real or personal property that may be or may become subject to a lien for taxes are hereby charged with notice that such property is or should be listed for taxation, that taxes are or may become a lien thereon, and that if taxes are not paid the proceedings allowed by law may be taken against such property. This notice shall be conclusively presumed, whether or not such persons have actual notice.

Article 26.

Collection and Foreclosure of Taxes.

§ 105-349. Appointment, term, qualifications, and bond of tax collectors and deputies. -- (a) Appointment and Term. The governing body of each county and municipality shall appoint a tax collector on or before July 1, 1971, to serve for a term to be determined by the appointing body and until his successor has been appointed and qualified. Until the first such appointments are made, county and municipal taxes shall be collected by the tax collectors presently serving under prior provisions of law. The governing body may remove the tax collector from office during his term for good cause shown after giving him notice in writing and an opportunity to appear and be heard at a public session of the governing body. No hearing shall be required, however, if the tax collector is removed for failing to meet the prerequisites prescribed by § 105-352(b) for delivery of the tax receipts. Unless otherwise provided by § 105-373, whenever any vacancy occurs in this office, the governing body shall appoint a qualified person to serve as tax collector for the period of the unexpired term.

(b) Qualifications. The governing body shall appoint as tax collector a person of character and integrity whose experience in business and collection work is satisfactory to the governing body.

(c) Bond. No tax collector shall be allowed to begin his duties until he shall have furnished bond conditioned upon his honesty and faithful performance in such amount as the governing body may prescribe. A tax collector shall not be permitted to collect any taxes not covered by his bond, nor shall a tax collector be permitted to continue collecting taxes after his bond has expired without renewal.

(d) Compensation. The compensation and expense allowances of the tax

collector shall be fixed by the governing body.

(e) Alternative to Tax Collector. In lieu of appointing a tax collector, the governing body may impose the duties of that office as outlined in this subchapter upon any county or municipal officer (other than a member of the governing body) who meets the personal and bonding requirements established by this section.

(f) Deputy tax collectors. The governing body of a county or municipality is authorized to appoint one or more deputy tax collectors and to establish their terms of office, compensation, and bonding requirements. A deputy tax collector shall have authority to perform, under the direction of the tax collector, any act that the tax collector may perform unless the governing body appointing the deputy specifically limits the scope of the deputy's authority.

§ 105-350. General duties of tax collectors. -- It shall be the duty of each tax collector:

- (1) To employ all lawful means to collect all property, poll, dog, license, privilege, and franchise taxes with which he is charged by the governing body.
- (2) To give such bond as may be required of him by the governing body under the provisions of § 105-349.
- (3) To perform such duties in connection with the preparation of the tax records and tax receipts as the governing body may direct under the provisions of §§ 105-319 and 105-320.
- (4) To keep adequate records of all collections he makes.
- (5) To account for all moneys coming into his hands in such detail as may be required by the chief accounting officer of the taxing unit.
- (6) To make settlement at the times required by § 105-373 and at any other time the governing body may require him to do so.
- (7) To submit to the governing body at each of its regular meetings a report of the amount he has collected on each year's taxes with which he is charged, the amount remaining uncollected, and the steps he is taking to encourage or enforce payment of uncollected taxes.
- (8) To send bills or notices of taxes due to taxpayers if instructed to do so by the governing body.
- (9) To visit delinquent taxpayers to encourage payment of taxes if instructed to do so by the governing body.

§ 105-351. Authority of successor collector. -- The successor in office of any tax collector may continue and complete any legally authorized process or proceeding begun by his predecessor for the collection of taxes.

§ 105-352. Delivery of tax receipts to tax collector; prerequisites; procedure upon default. -- (a) Time of Delivery. As provided in § 105-321, upon order of the governing body, the tax receipts shall be delivered to the tax collector on or before the first Monday in October.

(b) Settlement, Bond, and Prepayments. Before the tax receipts for the current year are delivered to the tax collector, he shall have:

- (1) Delivered to the chief accounting officer of the taxing unit the duplicate receipts issued for prepayments received by the tax collector.
- (2) Demonstrated to the satisfaction of the chief accounting officer that all moneys received by the tax collector as prepayments have been deposited to the credit of the taxing unit.
- (3) Made his annual settlement (as defined in § 105-373) for all taxes in his hands for collection.
- (4) Provided bond or bonds as required by § 105-349(c) for taxes for the current year and all prior years in his hands for collection. (In no event shall the governing body accept a bond of lesser amount than that prescribed by any local act applying to the taxing unit.)

In the event prepayments have been received by a person other than the regular tax collector, that person shall, before the tax receipts are delivered to the tax collector, deliver the prepayment receipt duplicates to the chief accounting officer and demonstrate to the satisfaction of that officer that all moneys received by him as prepayments have been deposited to the credit of the taxing unit. If the chief accounting officer has accepted

prepayments, he shall, not later than the day on which the tax receipts are delivered to the tax collector, make settlement with the governing body in such manner and form as the governing body may prescribe.

(c) Procedure upon Default. If, when the tax receipts for the current year have been computed and prepared, the regular tax collector shall not have met the requirements of subdivision (b), above, the governing body shall immediately appoint a special tax collector and, after he has given satisfactory bond for the full amount of the taxes as required by § 105-349(c), deliver to him the tax receipts for the current year and order him to make collections as provided in § 105-321. In the discretion of the governing body, the cost of the special tax collector's bond and compensation may be deducted from the compensation of the regular tax collector. If the regular tax collector shall thereafter meet the requirements of subdivision (b), above, the special collector shall make full settlement (in the manner provided in § 105-373 for tax collectors retiring from office), and the governing body, as provided in § 105-321, shall deliver the tax receipts for the current year to the regular tax collector and order their collection.

(d) Civil and Criminal Penalties.

- (1) Any member of the governing body who shall vote to deliver the tax receipts to a tax collector before the tax collector has met the requirements prescribed by this section shall be individually liable for the amount of taxes charged against the tax collector for which he has not made satisfactory settlement; and any member of the governing body who so votes, or who wilfully fails to perform any duty imposed by this section, shall be guilty of a misdemeanor

punishable by fine or imprisonment, or both, in the discretion of the court.

- (2) Any tax collector or other official who fails to account for prepayments as prescribed by this section shall be guilty of a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court.

§ 105-353. Place for collection of taxes. -- Taxes shall be payable at the office of the tax collector. For the convenience of taxpayers, the governing body may require the tax collector to be present to collect taxes in person or by deputy at other designated places within the taxing unit at times prescribed by the governing body. If the governing body exercises this authority, the tax collector shall give timely notice of the places and times at which he will be present for collection; this notice shall be published in a newspaper having general circulation in the taxing unit and posted at three or more public places within the taxing unit.

§ 105-354. Collections for districts and other units of local government.

Whenever a taxing unit collects taxes for some district or other unit of local government, those taxes, for collection and foreclosure purposes, shall be treated as taxes of the taxing unit making the collection.

§ 105-355. Creation of tax lien; date as of which lien attaches. --

(a) Lien on Real Property. Regardless of the time at which liability for a tax for a given fiscal year may arise or the exact amount thereof be determined, the lien for taxes levied on a parcel of real property shall attach to the parcel taxed on the date as of which property is to be listed under § 105-307, and the lien for taxes levied on personal property and polls shall attach to all real property of the taxpayer in the taxing unit on the same date. All penalties, interest, and costs allowed by law shall be added to the amount of the lien and shall be regarded as attaching at the same time as the lien for the principal amount of the taxes. For purposes of this subdivision (a):

- (1) Taxes levied on real property listed in the name of a life tenant under § 105-302(c)(8) shall be a lien on the fee as well as the life estate.
- (2) Taxes levied on improvements on or separate rights in real property owned by one other than the owner of the land, whether or not listed separately from the land under § 105-302(c)(11), shall be a lien on both the improvements or rights and on the land.

(b) Lien on Personal Property. Taxes levied on real and personal property and polls (including penalties, interest, and costs allowed by law) shall be a lien on personal property from and after levy or attachment and garnishment of the personal property levied upon or attached.

§ 105-356. Priority of tax liens. -- (a) On Real Property. The lien of taxes imposed on real and personal property and polls shall attach to real property at the time prescribed in § 105-355(a). The priority of that lien shall be determined in accordance with the following rules:

- (1) Subject to the provisions of the Revenue Act prescribing the priority of the lien for State taxes, the lien of taxes imposed under the provisions of this subchapter shall be superior to all other liens, assessments, charges, rights, and claims of any and every kind in and to the real property to which the lien for taxes attaches regardless of the claimant and regardless of whether acquired prior or subsequent to the attachment of the lien for taxes.
- (2) The liens of taxes of all taxing units shall be of equal dignity.
- (3) The priority of the lien for taxes shall not be affected by transfer of title to the real property after the lien has attached, nor shall it be affected by the death, receivership, or bankruptcy of the owner of the real property to which the lien attaches.

(b) On Personal Property. The lien of taxes on real and personal property and polls shall attach to personal property at the time prescribed in § 105-355(b). The priority of that lien shall be determined in accordance with the following rules:

- (1) The tax lien, when it attaches to personal property, shall, insofar as it represents taxes imposed upon the property to which the lien attaches, be superior to all other liens and

rights whether such other liens and rights are prior or subsequent to the tax lien in point of time.

- (2) The tax lien, when it attaches to personal property, shall, insofar as it represents taxes imposed upon property other than that to which the lien attaches, be inferior to prior valid liens and superior to all subsequent liens.
- (3) As between the tax liens of different taxing units, the tax lien first attaching shall be superior.

§ 105-357. Payment of taxes. -- (a) Medium of Payment. Taxes shall be payable in existing national currency. Deeds to real property, notes of the taxpayer or others, and payments in kind shall not be accepted in payment of taxes.

(b) Acceptance of Checks. In the tax collector's discretion and at his own risk, he may accept checks in payment of taxes. Should he do so, the tax collector shall have the option to issue the tax receipt immediately or to withhold the receipt until the check has been collected. If a tax collector accepts a check and issues a tax receipt and the check is thereafter returned unpaid (without negligence on the part of the tax collector in presenting the check for payment), the taxes for which the check was given shall be deemed unpaid; and the tax collector shall immediately correct the copy of the tax receipt and other appropriate records in his office to show the fact of nonpayment, and he shall give written notice by certified or registered mail to the person to whom the tax receipt was issued to return it to the tax collector. After correcting the records in his office to show the fact of nonpayment, the tax collector shall proceed to collect the taxes by the use of any remedies allowed for the collection of taxes or by bringing a civil action on the check.

(1) Effect on Tax Lien. If the tax collector accepts a check in payment of taxes on real property, issues the receipt therefor, and the check is later returned unpaid, the taxing unit's lien for taxes on the real property shall be inferior to the rights of purchasers for value and of persons acquiring liens of record for value if such purchasers or lienholders acquire their rights in good faith and without actual knowledge that

the check has not been collected, after examination of the copy of the tax receipt in the tax collector's office during the time that record showed the taxes as paid or after examination of the official receipt issued to the taxpayer prior to the date on which the tax collector notified him to return the receipt.

- (2) **Penalty.** In addition to interest for nonpayment of taxes provided by § 105-360 and in addition to any criminal penalties provided by law for the giving of worthless checks, the penalty for giving in payment of taxes a check that is returned because of insufficient funds or nonexistence of an account of the drawer shall be ten percent (10%) of the amount of the check. This penalty shall be added to and collected in the same manner as the taxes for which the check was given.

§ 105-358. Partial payments. -- Unless otherwise directed by the governing body, the tax collector shall accept partial payments on taxes and issue partial payment receipts therefor.

When a payment is made on the tax for any year or on any installment, it shall first be applied to accrued penalties, interest, and costs and then to the principal amount of the tax or installment. In its discretion, the governing body may prescribe by uniform regulation the minimum amount or percentage of tax liability that may be accepted as a partial payment.

§ 105-359. Prepayments. -- (a) To Whom Made. Payments of taxes made before the tax receipts have been delivered to the tax collector, herein referred to as prepayments, shall be made to the regular tax collector unless the governing body shall have designated some other person to receive them. The regular tax collector or person named to receive prepayments shall give bond satisfactory to the governing body.

(b) When Accepted. No taxing unit shall be required to accept any tender of prepayment until the annual budget estimate has been filed as required by law.

(c) Estimation of Liability; Overpayment and Underpayment. If the tax rate has not been finally fixed or if the assessed valuation of the taxpayer's property has not been finally determined at the time a prepayment is tendered, the tax collector shall compute the amount of the tax liability on the basis of the best information available to him. If it is later ascertained that there has been an overpayment, the excess (without interest) shall be refunded by the taxing unit. If it is later ascertained that there was an underpayment, the unpaid balance of the tax shall be due, and the balance due shall be allowed the discount or charged the interest in effect with respect to taxes for the same year at the time the balance is paid.

(d) Receipts. A receipt issued for a prepayment made on the basis of an estimate of the tax rate or assessed valuation shall so state, and such a receipt shall not release property from the tax lien created by § 105-355(a). An official and final receipt shall be made available to the taxpayer as soon as possible after determination that the tax has been fully paid.

(e) Duties of Chief Accounting Officer. It shall be the duty of the chief accounting officer of the taxing unit to:

- (1) Secure and retain in his office, available to taxpayers upon request, the official receipts for taxes paid in full by prepayment.
- (2) Credit on the tax receipts to be delivered to the tax collector all taxes that have been paid in full or in part by prepayment.
- (3) Prepare and deliver refunds for overpayments made by way of prepayment.
- (4) Reduce the charge to be made against the tax collector by deducting from the total amount of taxes levied so much of the amount received as prepayments as is not required to be refunded under the provisions of subdivision (c), above.

Any chief accounting officer who fails to perform the duties imposed upon him by this subdivision (e) shall be guilty of a misdemeanor and subject to fine or imprisonment, or both, in the discretion of the court.

§ 105-360. Due date; interest for nonpayment of taxes; discounts for prepayment. -- (a) All taxes levied by counties and municipalities under the provisions of this subchapter shall be due and payable on the first day of September of the fiscal year for which the taxes are levied. If paid:

- (1) On or after the due date and before the first day of January thereafter, taxes shall be paid at par or face amount.
- (2) On or after the first day of January following the due date and before the first day of February thereafter, there shall be added to the taxes interest at the rate of two percent (2%).
- (3) On or after the first day of February following the due date, there shall be added to the taxes, in addition to the two percent (2%) provided in subdivision (a)(2), above, interest at the rate of one percent (1%) per month or fraction thereof until the taxes plus penalties and interest have been paid.

(b) Any person who was on active duty as a member of the armed forces of the United States during World War II, the Korean Conflict, or the Viet Nam Era, upon exhibiting a certificate of his discharge from the armed forces to the appropriate tax collector, shall be relieved of the payment of any interest that may have accrued during the period of such service on taxes levied against his property or poll. For purposes of this subdivision (b), World War II shall mean the period beginning December 7, 1941, and ending December 31, 1946; the Korean Conflict shall mean the period beginning June 27, 1950, and ending January 31, 1955; and the Viet Nam Era shall mean the period beginning August 5, 1964, and ending on such date as shall be prescribed by Presidential proclamation or concurrent resolution of the Congress.

(c) Under the conditions established by this subdivision (c), the governing body of any county or municipality levying taxes under the provisions of this subchapter shall have authority to establish a schedule of discounts to be applied to taxes paid prior to the due date prescribed in subdivision (a), above. To exercise this authority, the governing body shall:

- (1) Not later than the first day of May preceding the due date of the taxes to which it first applies, adopt a resolution or ordinance specifying the amounts of the discounts and the periods of time during which they are to be applicable.
- (2) Submit the resolution or ordinance to the State Board of Assessment for approval.
- (3) Upon approval by the State Board of Assessment, publish the discount schedule at least once in some newspaper having general circulation in the taxing unit.

When such a resolution or ordinance is submitted to the State Board of Assessment, the Board may approve it or disapprove it in whole or in part if, in the opinion of the Board, the discounts or the periods of time for which discounts are allowed are excessive or unreasonable. Such a resolution or ordinance, once adopted and approved by the State Board of Assessment, shall continue in effect until repealed.

§ 105-361. Statement of amount of taxes due. -- (a) Duty to Furnish a Certificate. On the request of any of the persons described in subdivision (a)(1), below, and upon the condition prescribed by subdivision (a)(2), below, the tax collector shall furnish a written certificate stating the amount of any taxes and special assessments for the current year and for prior years in his hands for collection (together with any penalties, interest, and costs accrued thereon) that under G.S. 105-355(a) are made a lien on a parcel of real property in the taxing unit.

(1) Who May Make Request. Any of the following persons shall be entitled to request the certificate:

- a. An owner of the real property.
- b. An occupant of the real property.
- c. A person having a lien on the real property.
- d. A person having a legal interest or estate in the real property.
- e. The authorized agent or attorney of any person described in subdivisions (a)(1) a through d, above.

(2) Duty of Person Making Request. The tax collector shall not be required to furnish a certificate unless the person making the request specifies in whose name the real property was listed for taxation for each year for which the information is sought.

(b) Reliance on the Certificate. When a person who requested and received a certificate as provided in subdivision (a), above, has relied on it by paying to the tax collector the amount of taxes and special

assessments stated therein to be a lien on the real property, and when the tax collector has accepted such payment, the lien shall be discharged.

The collector shall be liable on his bond for any loss to the taxing unit arising from an understatement of the tax obligation in the preparation of a certificate furnished under this section.

(c) Penalty. Any tax collector who fails or refuses to furnish a certificate when requested under the conditions prescribed in this section shall be liable for a penalty of fifty dollars (\$50.00) recoverable in a civil action by the person who made the request.

(d) Oral Statements. An oral statement made by the tax collector as to the amount of taxes, penalties, interest, and costs due on any real or personal property or poll shall bind neither the tax collector nor the taxing unit.

§ 105-362. Discharge of Lien on Real Property. -- (a) General Rule.

The tax lien on real property shall continue until the principal amount of the taxes plus penalties, interest, and costs allowed by law have been fully paid.

(b) Release of Separate Parcels from Tax Lien.

(1) When the lien of taxes of any taxing unit for any year attaches to two or more parcels of real property owned by the same taxpayer, the lien may be discharged as to any parcel at any time prior to advertisement of tax foreclosure sale in accordance with either subdivision (b)(1)a or subdivision (b)(1)b:

- a. Upon payment, by or on behalf of the listing taxpayer, of the taxes for the year on the parcel or parcels to be released, plus all personal property and poll taxes owed by the listing taxpayer for the same year.
- b. Upon payment, by or on behalf of any person (other than the listing taxpayer) who has a legal interest in the parcel or parcels to be released, of the taxes for the year on the parcel or parcels to be released, plus a proportionate part of personal property and poll taxes owed by the listing taxpayer for the same year. The proportionate part shall be a percentage of the personal property and poll taxes equal to the percentage of the total assessed valuation of the taxpayer's real property in the taxing unit represented by the assessed valuation of the parcel or parcels to be released.

- (2) When real property listed as one parcel is divided, a part thereof may be released as provided in subdivision (b)(1), above, after the assessed valuation of the part to be released has been determined and certified to the tax collector by the tax supervisor.
- (3) It shall be the duty of the tax collector accepting a payment made under this subdivision (b) for the purpose of releasing the tax lien from less than all of the taxpayer's real property:
- a. To give the person making the payment a receipt setting forth a description of the real property released from the tax lien and bearing a statement that such property is being released from the tax lien.
 - b. To indicate on the tax receipts, tax records, and other official records of his office what real property has been released from the tax lien.

If the tax collector fails to issue the receipt or make the record entries required by this subdivision (3), the omission may be supplied at any time.

- (4) When any parcel of real property has been released under the provisions of this subdivision (b) from the lien of taxes of any taxing unit for any year, the property shall not thereafter be subject to the lien of any other regularly levied taxes of the same taxing unit for the same year, whether such other taxes be levied against the listing owner of the property or against some other person acquiring title thereto. No tax foreclosure judgment for such other taxes shall become a lien on the released property; and, upon appropriate request and satisfactory proof of the release by any interested person,

the clerk of the superior court shall indicate on the judgment docket that the judgment is not a lien on the released property. However, failure to make such an entry shall not have the effect of making the judgment a lien on the released property.

§ 105-363. Remedies of cotenants and joint owners of real property. --

(a) Payment of Taxes on Share of One Cotenant. Any one of several tenants in common or joint tenants (other than copartners) of real property may pay that portion of the taxes, interest, and costs that are a lien upon his undivided share of the property and thereby release the tax lien from his share. Thereafter, in any partition sale of the property the share of the joint owner who has paid his portion of the taxes shall be set apart free from the tax lien, and his share of the proceeds of any sale shall not be diminished by disbursements to pay any taxes, interest, or costs. In the event the tax lien is foreclosed and the property is sold for failure to pay taxes, the share of any joint owner who has paid his portion of the taxes shall be excepted from the advertisement and sale.

(b) Payment of Entire Amount of Taxes by One Cotenant. Any one of several tenants in common or joint tenants (other than copartners) of real property may pay the entire amount of the taxes, interest, and costs constituting a lien on the property, and any amount so paid that is in excess of his share of the taxes, interest, and costs and that was not paid through agreement with or on behalf of the other joint owners shall constitute a lien in his favor upon the shares of the other joint owners. Such a lien may be enforced in a proceeding for actual partition, a proceeding for partition and sale, or by any other appropriate judicial proceeding.

§ 105-364. Collection of taxes outside the taxing unit. -- (a) Duty of Governing Body. It shall be the duty of the governing body of each taxing unit to require reports from the tax collector at such times as it may prescribe (but not less frequently than in connection with the tax collector's annual settlement) concerning the efforts he has made to locate taxpayers who have removed from the taxing unit, the efforts he has made to locate personal property in other taxing units belonging to delinquent taxpayers, and the efforts he has made under the provisions of this section to collect taxes.

(b) Duty to Certify Unpaid Taxes. If a taxpayer has no personal property or real property subject to the tax lien in the taxing unit but does have personal property in some other taxing unit in this State, or if a taxpayer has removed from the taxing unit, leaving no personal property or real property subject to the tax lien there, and is known to be in some other taxing unit in this State, the tax collector shall forward the tax receipt (with a certificate stating that the taxes are unpaid) for collection to the tax collector of the taxing unit in which the taxpayer is known to have personal property or in which he is known to be. The tax collector may not, however, certify an unpaid tax receipt to another taxing unit if ten years have elapsed since the date the unpaid taxes became due.

(c) Effect of Certificate; Duty of Receiving Tax Collector. In the hands of the tax collector receiving them, the copy of the tax receipt and the certificate of nonpayment shall have the force and effect of an unpaid tax receipt of his own taxing unit, and it shall be the receiving tax collector's duty to proceed immediately to collect the taxes by any means by which he

could lawfully collect taxes of his own taxing unit. Within thirty days after receiving such a tax receipt and certificate, the collector receiving them shall report to the tax collector that sent them that he has collected the tax, that he has begun proceedings to collect the tax, or that he is unable to collect it. If the tax collector reports that he has begun proceedings to collect the tax, he shall, not later than ninety days after so reporting, make a final report to the tax collector who certified the tax receipt stating that he has collected the tax or that he is unable to collect it.

- (1) In acting on a tax receipt and certificate under the provisions of this section, the tax collector receiving them shall, in addition to collecting the amount of taxes certified as due, also collect for his services a fee equal to ten percent (10%) of the amount of taxes actually collected. This collection fee shall be retained by the tax collector making the collection for his own use and shall not be turned over to the taxing unit by which he is employed.
- (2) Within five days after making a collection under the provisions of this section, the tax collector receiving the tax receipt and certificate shall remit the funds collected, less the fee provided for in subdivision (c)(1), above, to the tax collector of the taxing unit that levied the tax.
- (3) If the tax collector receiving the tax receipt and certificate reports that he is unable to collect the tax, he shall make his report under oath and shall state therein that he has used due diligence and is unable to collect the tax by levy, attachment and garnishment, or any other legal means.

(d) Liability on Bond. A tax collector who receives a tax receipt and certificate from the tax collector of another taxing unit under the provisions of subdivision (b), above, shall be liable on his bond to the taxing unit that levied the tax for the amount of the taxes certified if:

- (1) The tax collector receiving the certified tax receipt fails to make any report to the certifying tax collector within thirty days after receiving the certified tax receipt.
- (2) The tax collector receiving the certified tax receipt fails to swear to any report stating that he is unable to collect the certified tax.
- (3) Having reported that he has begun proceedings to collect a certified tax, the tax collector receiving the certified tax receipt fails to make a final report within ninety days after reporting that he has begun proceedings for collection.

§ 105-365. Preference Accorded Taxes in Liquidation of Debtors' Estates. -- In all cases in which a taxpayer's assets are in the hands of a receiver or assignee for the benefit of creditors or are otherwise being liquidated or managed for the benefit of creditors, the taxes owed by the debtor (together with interest, penalties, and costs) shall be a preferred claim, second only to administration expenses and specific liens. The provisions of this section shall not be construed to modify or reduce the priority given by § 105-356 to tax liens on real and personal property or to alter or preclude the exercise of any remedies against personal property provided for in § 105-366.

§ 105-366. Remedies against personal property. -- (a) Authority to Proceed Against Personal Property; Relation Between Remedies Against Personal Property and Remedies Against Real Property. All tax collectors shall have authority to proceed against personal property to enforce the collection of taxes as provided in this section and in §§ 105-367 and 105-368. Any tax collector may, in his discretion, proceed first against personal property before employing the remedies for enforcing the lien for taxes against real property, and he shall proceed first against personal property:

- (1) When directed to do so by the governing body of the taxing unit; or
- (2) When requested to do so by the taxpayer or by a mortgagee or other person holding a lien upon real property subject to the lien for taxes if the person making the request furnishes the tax collector with a written statement describing the personal property to be proceeded against and giving its location.

No sale of a tax lien or foreclosure of a tax lien on real property may be attacked as invalid on the ground that payment of the tax should have been procured from personal property.

(b) Remedies After Taxes Are Due. At any time after taxes are due and before the filing of a tax foreclosure complaint under § 105-374 or the docketing of a judgment for taxes under § 105-375, and subject to the provisions of § 105-356 governing the priority of liens, the tax collector may levy upon and sell or attach the following property for failure to pay taxes:

- (1) Any personal property owned by the taxpayer, regardless of the time at which it was acquired and regardless of the existence or date of creation of mortgages or other liens thereon.
- (2) Any personal property transferred by the taxpayer to a relative (which shall mean any parent, grandparent, child, grandchild, brother, sister, aunt, uncle, niece, or nephew, or their spouses, of the taxpayer or his spouse).
- (3) Personal property in the hands of a receiver for the taxpayer. (It shall not be necessary for the tax collector to apply for an order of the court directing payment or authorizing the levy or attachment, but he may proceed as though the property were not in the hands of a receiver, and the tax collector's filing of a claim in a receivership proceeding shall not preclude him from proceeding to levy under § 105-367 or to attach under § 105-368.)
- (4) Personal property of a deceased taxpayer if the levy or attachment is made before final settlement of the estate.
- (5) The stock of goods or fixtures of a wholesale or retail merchant (as defined in Schedule E of the Revenue Act) in the hands of a purchaser or transferee thereof, or any other personal property of the purchaser or transferee of such property, if the taxes on the goods or fixtures

remain unpaid thirty days after the date of the sale or transfer, but in such a case the levy or attachment must be made within six months of the sale or transfer.

- (6) Personal property of the taxpayer that has been repossessed by one having a security interest therein so long as the property remains in the hands of the person who has repossessed it or the person to whom it has been transferred other than by bona fide sale for value.
- (7) Personal property due the taxpayer or to become due to him within the calendar year.
- (8) Personal property of a partner in satisfaction of taxes on partnership property, but only after the tax collector:
 - a. Has sold the taxing unit's lien for taxes against the partnership real property, if any; and
 - b. Exhausted the partnership's personal property through the use of levy and attachment and garnishment; and
 - c. Exercised the authority granted him by § 105-364 in an effort to collect the taxes due on the partnership's property.
- (9) Personal property transferred by the taxpayer by any type of transfer other than those mentioned in this subdivision (b) and other than by bona fide sale for value if the levy or attachment is made within six months of the transfer.

(c) Remedies Before Taxes Are Due. If between the date as of which property is to be listed and the first day of September of the fiscal year for which the taxes are imposed the tax collector has reasonable grounds for believing that the taxpayer is about to remove his property from the taxing unit or transfer it to another person or is in imminent danger of becoming insol-

vent, the tax collector may levy on or attach that property or any other personal property of the taxpayer, in the manner provided in §§ 105-367 and 105-368, prior to the first day of September for the taxes to become due on that date. When collected under this subdivision (c), the amount of taxes not yet determined shall be computed under the provisions of § 105-359, and any applicable discount shall be allowed.

(d) Remedies Against Sellers and Purchasers of Stocks of Goods or Fixtures of Wholesale or Retail Merchants.

(1) Any wholesale or retail merchant (as defined in Schedule E of the Revenue Act) who sells or transfers the major part of his stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business or who goes out of business, shall:

- a. At least forty-eight hours prior to the date of the pending sale, transfer, or termination of business, give notice thereof to the tax supervisors and tax collectors of the taxing units in which his business is located; and
- b. Within thirty days of the sale, transfer, or termination of business, pay all taxes due or to become due on the transferred property on the first day of September of the current calendar year.

- (2) Any person to whom the major part of the stock of goods, materials, supplies, or fixtures of a wholesale or retail merchant (as defined in Schedule E of the Revenue Act) is sold or transferred, other than in the ordinary course of business, or who becomes the successor in business of a wholesale or retail merchant shall withhold from the purchase money paid to the merchant an amount sufficient to pay the taxes due or to become due on the transferred property on the first day of September of the current calendar year until the former owner or seller produces either a receipt from the tax collector showing that the taxes have been paid or a certificate that no taxes are due. If the purchaser or successor in business fails to withhold a sufficient amount of the purchase money to pay the taxes as required by this subdivision (d) and the taxes remain unpaid after the thirty-day period allowed, he shall be personally liable for the amount of the taxes unpaid, and his liability may be enforced by means of a civil action brought in the name of the taxing unit against him in an appropriate trial division of the general court of justice in the county in which the taxing unit is located.
- (3) Whenever any wholesale or retail merchant (as defined in Schedule E of the Revenue Act) sells or transfers the major part of his stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business, or goes out

of business, and the taxes due or to become due on the transferred property on the first day of September of the current calendar year are unpaid thirty days after the date of the transfer or termination of business, the tax collector, to enforce collection of the unpaid taxes, may:

- a. Levy on or attach any personal property of the seller, or
 - b. Levy on or attach any of the property transferred in the hands of the transferee or successor in business, or any other personal property of the transferee or successor in business, but in either case the levy or attachment must be made within six months of the transfer or termination of business.
- (4) In using the remedies provided in this subdivision (d), the amount of taxes not yet determined shall be computed in accordance with § 105-359, and any applicable discount shall be allowed.

§ 105-367. Procedure for levy. -- (a) The levy upon and sale of tangible personal property for tax collection purposes (including levy and sale fees) shall be governed by the laws regulating levy and sale under execution except as otherwise provided in this section.

(b) The tax collector or any duly appointed deputy tax collector shall make the levy and conduct the sale; it shall not be necessary for the sheriff to make the levy or conduct the sale. However, upon the authorization of the governing body of the taxing unit, the tax collector may direct an execution against personal property for taxes to the sheriff in the case of county or municipal taxes or to a municipal policeman in the case of municipal taxes. In either case the officer to whom the execution is directed shall proceed to levy on and sell the personal property subject to levy in the manner and with the powers and authority normally exercised by sheriffs in levying upon and selling personal property under execution.

(c) In addition to the notice of sale required by the laws governing sale of property levied upon under execution, the tax collector may advertise the sale in any reasonable manner and for any reasonable period of time he deems necessary to produce an adequate bid for the property. The taxing unit shall advance the cost of all advertising.

(d) Levy and sale fees, plus actual advertising costs, shall be added to and collected in the same manner as taxes. The advertising costs, when collected, shall be used to reimburse the taxing unit for advertising costs it has advanced. Levy and sale fees, when collected, shall be treated in the same manner as other fees received by the collecting official.

§ 105-368. Procedure for attachment and garnishment. -- (a) Subject to the provisions of § 105-356 governing the priority of the lien acquired, the tax collector may attach wages and other compensation, rents, bank deposits, the proceeds of property subject to levy, or any other intangible personal property in the circumstances and to the extent prescribed in § 105-366(b), (c), and (d).

In the case of property due the taxpayer or to become due to him within the current calendar year, the person owing the property to the taxpayer or having the property in his possession shall be liable for the taxes to the extent of the amount he owes or has in his possession. However, when wages or other compensation for personal services is attached, the garnishee shall not pay to the tax collector more than ten percent of such compensation for any one pay period.

(b) To proceed under this section, the tax collector shall serve or cause to be served upon the taxpayer and the person owing or having in his possession the wages, rents, debts, or other property sought to be attached a notice as hereinafter provided, which notice may be served by any deputy or employee of the tax collector or by any officer having authority to serve summonses. If the taxpayer no longer resides within the State or cannot be located therein, the notice may be served upon him by registered or certified mail, return receipt requested, and such service shall be conclusively presumed to have been made upon the exhibition of the return receipt. The notice shall contain:

- (1) The name of the taxpayer and his address, if known.
- (2) The amount of the taxes, penalties, interest, and costs
(including the fees allowed by this section) and the
year or years for which the taxes were imposed.

(3) The name of the taxing unit or units by which the taxes were levied.

(4) A brief description of the property sought to be attached.

(5) A copy of the applicable law, that is, §§ 105-366 and 105-363.

Notices concerning two or more taxpayers may be combined if they are to be served upon the same garnishee, but the taxes, penalties, interest, and costs charged against each taxpayer must be set forth separately.

(c) If the garnishee has no defense to offer or no set-off against the taxpayer, he shall within ten days after service of the notice answer it by sending to the tax collector by registered mail a statement to that effect, and if the amount demanded by the tax collector is then due to the taxpayer or subject to his demand, the garnishee shall remit it to the tax collector with his statement; but if the amount due to the taxpayer or subject to his demand is to mature in the future, the garnishee's statement shall set forth that fact, and the demand shall be paid to the tax collector upon maturity. Any payment by the garnishee under the provisions of this subdivision (c) shall completely satisfy any liability therefor on his part to the taxpayer.

(d) If the garnishee has a defense or set-off against the taxpayer, he shall state it in writing under oath, and, within ten days after service of the garnishment notice, he shall send two copies of his statement to the tax collector by registered mail. If the tax collector admits the defense or set-off, he shall so advise the garnishee in writing within ten days after receipt of the garnishee's statement, and the attachment or garnishment shall thereupon be discharged to the amount required by the defense or set-off, and any amount attached or garnished which is not affected by the defense or set-off shall be remitted to the tax collector as provided in subdivision (c), above.

If the tax collector does not admit the defense or set-off, he shall set forth in writing his objections thereto and send a copy thereof to the garnishee within ten days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time the tax collector shall file a copy of the notice of garnishment, a copy of the garnishee's statement, and a copy of the tax collector's objections thereto in the appropriate division of the general court of justice of the county in which the garnishee resides or does business, where the issues made shall be tried as in civil actions.

(e) The taxpayer may raise any defenses to the attachment or garnishment that he may have in the manner provided in subdivision (d), above, for the garnishee.

(f) The fee for serving a notice of garnishment shall be the same as that charged in a civil action. If judgment is entered in favor of the taxing unit by default or after hearing, the garnishee shall become liable for the taxes, penalties, and interest due by the taxpayer, plus the fees and costs of the action, but payment shall not be required from amounts which are not to become due to the taxpayer until they actually come due. The garnishee may satisfy the judgment upon paying the amount thereof, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered, either the taxing unit or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of the taxes, penalties, interest, and costs, the tax collector may release the attachment or garnishment, or execution may be stayed at the request of the tax collector pending appeal, but the final judgment shall be paid or enforced as above provided. If judgment is rendered against the taxing unit, it shall pay the fees and costs of the action. All fees collected by officers shall be disposed of in the same manner as other fees collected by such officers.

(g) Tax collectors may proceed against the wages, salary, or other compensation of officials and employees of this State and its agencies, instrumentalities, and political subdivisions in the manner provided in this section. If the taxpayer is an employee of the State, the notice of attachment shall be served upon him and upon the head or chief officer of the department, agency, instrumentality, or institution by which he is employed. If the taxpayer is an employee of a political subdivision of the State (county, municipality, etc.), the notice of attachment shall be served upon him and upon the officer charged with making up the payrolls of the political subdivision by which he is employed. All deductions from the wages or salary of a taxpayer made pursuant to this subdivision (g) and remitted to the tax collector shall, pro tanto, constitute a satisfaction of the salary or wages due the taxpayer.

(h) (1) Any person who, after written demand therefor, refuses to give the tax collector or tax supervisor a list of all of his employees who may be liable for taxes, shall be guilty of a misdemeanor.

(2) Any tax collector or tax supervisor who receives, upon his written demand, any list of employees may not release or furnish that list or any copy thereof, or disclose any name or information thereon, to any other person, and may not use that list in any manner or for any purpose not directly related to and in furtherance of the collection and foreclosure of taxes. Any tax collector or tax supervisor who violates or allows the violation of this subdivision (h)(2) shall be guilty of a misdemeanor.

§ 105-369. Sale of tax liens on real property for failure to pay taxes. -- (a) Report of Unpaid Taxes that are Liens on Real Property. On the first Monday in February in each year, each county tax collector and on the second Monday in February in each year, each municipal tax collector shall report to the governing body the total amount of unpaid taxes for the current fiscal year that are liens on real property, and the governing body shall thereupon order the tax collector to sell such tax liens at one of the times specified in subdivision (b), below. For purposes of this section, district taxes collected by county tax collectors shall be regarded as county taxes and district taxes collected by municipal tax collectors shall be regarded as municipal taxes.

(b) Time for Sale. The county tax lien sale shall be held on the first Monday in March, April, May, or June, and the municipal tax lien sale shall be held on the second Monday in any of the four specified months. (If the taxes of two or more taxing units are collected by the same tax collector, only one sale shall be held for the tax liens of both, or all, on either the first or second Monday of a month in which tax lien sales may be conducted.) If the date chosen for the lien sale is a legal holiday, the sale shall be held on the following Tuesday. No tax lien sale may be delayed or restrained by order of any court in this State. Failure to hold the tax lien sale within the time prescribed by this subdivision (b) shall not affect the validity of the taxes or the tax liens, nor shall it affect the validity of the tax lien sale when thereafter held.

(c) Place and Hour of Sale. County tax lien sales shall be held at the courthouse; municipal tax lien sales shall be held at either the city or town hall or the county courthouse. Tax lien sales shall be held at an hour to

be determined by the tax collector and specified in the advertisement required by subdivision (d), below.

(d) Advertisement of Sale. Notice of the time, place, and purpose of the tax lien sale shall be given by advertisement at some public place at the courthouse (in the case of county taxes) or city or town hall (in the case of municipal taxes) and by advertisement once each week for four successive weeks preceding the sale in one or more newspapers having general circulation in the taxing unit. The final newspaper publication shall be not less than five days before the date of the sale. If there is no newspaper having general circulation in the taxing unit, the advertisement shall be posted in at least one public place in each township (in the case of county taxes) or in at least three public places in the municipality (in the case of municipal taxes) in addition to the notice posted at the courthouse or city or town hall. The costs of newspaper advertising shall be paid by the taxing unit. (If the taxes of two or more taxing units are collected by the same tax collector, the tax liens of each unit shall be advertised separately unless, under the provisions of a special act or contractual agreement between the taxing units, joint advertisement is permitted.)

(e) Contents of Advertisement and Notice. The posted notice and newspaper advertisement required by subdivision (d), above, shall set forth the following information:

- (1) The purpose of the tax lien sale.
- (2) The place at which the tax lien sale will be conducted.
- (3) The date on which the tax lien sale will be conducted.
- (4) The hour at which the tax lien sale will begin.

- (5) The name of each person to whom is listed real property on which the taxing unit has a lien for unpaid taxes, together with a brief description of each parcel of land to which such a lien has attached and a statement of the principal amount of the taxes constituting a lien against the parcel.
- (6) A statement that the amounts advertised will be increased by interest and costs and that the omission of interest and costs from the amounts advertised will not constitute a waiver of the taxing unit's claim for those items.
- (7) A statement that no bid will be received unless it is at least equal to the principal amount of the taxes advertised plus interest and costs accrued thereon at the date of sale.
- (8) In the event the list of tax liens has been divided for purposes of advertisement in more than one newspaper, a statement of the names of all newspapers in which advertisements will appear and the dates on which they will be published.

(f) Manner of Sale. The sale may be conducted by the tax collector or by a deputy tax collector designated by the tax collector. The sale shall be held by public outcry at the time and place specified and in strict accordance with the terms stated in the advertisement.

- (1) Sale of Liens on Several Parcels Owned by One Taxpayer. In the tax collector's discretion, he may sell separately the tax lien on each of several parcels belonging to the same taxpayer, or he may sell as one lot the tax liens on all parcels belonging to the same taxpayer.

- (2) Bids by Private Persons. In the tax collector's discretion, he may demand immediate payment from any successful bidder at the lien sale, and he may reject the bid if the bidder fails to comply with the demand.
- (3) Taxing Unit as Purchaser. In the absence of a bid at least equal to the principal amount of the taxes plus interest and costs accrued thereon, the taxing unit shall, without submitting a formal bid, become the purchaser for an amount equal to that sum. (If the taxes of two or more taxing units are to be collected by the same tax collector and there is an absence of an adequate bid, the taxing unit whose liens have the largest total value may become the purchaser, or the taxing units may become joint purchasers for the benefit of each according to its interest.)
- (4) Failure of Tax Collector to Attend Sale. If any tax collector shall fail to attend any duly advertised tax lien sale in person or by competent deputy, he shall be guilty of a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court, and he shall also be liable on his bond to a penalty of three hundred dollars (\$300.00).

(g) Costs of Sale. Costs of sale, which shall be included in the minimum sale price as provided in subdivision (e), above, shall consist of a sale fee not exceeding fifty cents (50¢) per parcel and actual advertising costs. Actual advertising costs per parcel shall be determined by the tax collector on any reasonable basis. Advertising costs and sale fees collected through sale of the tax lien shall be deemed to be taxes.

(h) Payments During Advertising Period. At any time between the beginning of the advertisement and the time of the tax lien sale, any parcel may be withdrawn from the sale list by payment of the taxes plus interest that has accrued to the time of payment and a proportionate part of the advertising cost to be determined by the tax collector. Thereafter, the tax collector shall delete that parcel from the advertisement, but if he fails to do so he shall not be liable for his failure to make the deletion unless the tax lien on the parcel is actually sold.

(i) Listing and Advertising in Wrong Name. No tax lien sale shall be void because the real property to which the lien attached was listed or advertised in the name of a person other than the person in whose name the property should have been listed for taxation if the property was in other respects correctly described on the abstract or in the advertisement.

(j) Acts of De Facto Officers. In all actions, proceedings, and controversies involving the title to real property affected by a tax lien sale or held under and by virtue of a tax foreclosure proceeding authorized by this subchapter, all acts of tax supervisors, tax collectors, members of unit governing bodies, and other officers de facto shall be deemed and construed to be of the same validity as acts of officers de jure.

(k) Proof of Sale. The tax receipts, tax records, and tax sale certificates of the office of the tax collector conducting a tax lien sale, or properly certified copies thereof, shall be deemed sufficient evidence to prove the sale of the tax lien on any real property under this section or the payment of the taxes thereon.

(l) Wrongful Sale; Reimbursement; Penalties.

(1) When by mistake or wrongful act of the tax collector a tax lien has been sold on real property on which no tax was due,

the tax lien shall be void; the taxing unit shall reimburse the purchaser by paying him the amount he expended in purchasing the lien with interest thereon at six percent (6%) per annum; and the tax collector shall be liable to the taxing unit upon his bond for all amounts so expended by the taxing unit in excess of the amount received by it from the tax lien sale.

- (2) Any tax collector or deputy tax collector who shall sell or assist in selling the tax lien on any real property knowing the property not to be subject to taxation or knowing that the taxes for which the lien is sold have been paid or who shall knowingly and willfully sell or assist in selling the tax lien on any real property for payment of taxes in order to defraud the owner of the real property, or who shall knowingly and wilfully cause foreclosure proceedings to be instituted on a tax lien so sold shall be guilty of a misdemeanor. Upon conviction, the tax collector or deputy tax collector shall be subject to a fine of not less than one thousand dollars (\$1,000.00) nor more than three thousand dollars (\$3,000.00) or imprisonment not exceeding one year, or both, and he shall be required to pay the injured party all damages sustained by his act.

§ 105-370. Evidence of purchase of tax lien. -- (a) Purchase by Taxing Unit. The governing body of each taxing unit that becomes the purchaser at a tax lien sale shall determine whether or not the tax collector shall be required to issue tax lien sale certificates to and in the name of the purchasing unit. If the governing body determines that the issuance of certificates is not necessary to provide adequate records of tax liens and tax collections, it shall direct the tax collector to mark or stamp the original tax receipts "Sold to (name of the taxing unit) on (date of tax lien sale)." If the issuance of certificates is deemed necessary, they shall be issued in substantially the form set forth in subdivision (c), below, with duplicates on which shall be reflected all payments or assignments. Whether or not certificates are issued, interest at the rate of twelve percent (12%) per annum shall accrue on the amount bid by the taxing unit for the lien from the date of the tax lien sale, and the taxing unit may foreclose the tax lien and sell the property by any method authorized by law.

(b) Sale to Private Purchaser. In the event a private person is the successful bidder at the tax lien sale, the tax collector shall issue to him a certificate of sale for each tax lien he has purchased. The certificate, which shall be in substantially the form set forth in subdivision (c), below, shall be issued as soon as possible after the tax lien sale, but in no event shall it be issued before the purchase price has been paid. A copy of each tax lien sale certificate shall be retained by the tax collector in a special book or file designated "Certificates of Sale for Taxes for the Year" and shall be the official record for the purpose of determining whether a lien exists in favor of any certificate owner other than a taxing unit. When a tax sale certificate is issued to a purchaser, the original and all copies of the tax receipt for the taxes represented by the lien sale certificate shall be stamped or marked

"Paid," and the original shall be retained in the tax collector's office.

(c) Tax Sale Certificate Form. The certificate evidencing purchase of a tax lien shall be in substantially the following form:

North Carolina

. (name of taxing unit)

I,, tax collector of (taxing unit), do hereby certify that the tax lien on the following described real property in the taxing unit, to wit:

. (description of real property)

was, on the . . . day of, 19 . . ., duly sold by me in the manner provided by law for the delinquent taxes of
 (listing taxpayer) for the year 19 . . ., amounting to \$, including interest and costs allowed by law, when and where (name of purchaser) purchased the lien on the above-described real property at the price of \$, which amount was the highest and best bid for the tax lien. I further certify that unless payment of the lien is made within the time and in the manner provided by law, including the interest thereon, (the purchaser), his heirs or assigns, may foreclose the lien by any proceeding authorized by law.

In witness whereof, I have hereunto set my hand this . . . day of, 19 . . .

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Tax Collector

(d) Prima Facie Evidence. A tax sale certificate issued or a tax receipt marked or stamped in accordance with the provisions of subdivisions (a), (b), and (c), above, shall be prima facie evidence of the regularity of all prior proceedings incident to the tax lien sale and of the due performance of all things essential to the validity thereof.

§ 105-371. Rights of private holder of tax sale certificate. -- (a) Lien and Interest. The private person who purchases a tax lien sale certificate, his heirs and assigns, shall have a lien on the real property for the amount of the purchase price plus interest at the rate of twelve percent (12%) per annum on the portion of the purchase price that equals the total of the amount of the tax and penalties, interest thereon to the date of the lien sale, the cost of advertising, and the sale fee. The purchaser's lien shall be of the same dignity as similar liens owned by taxing units, and it may be foreclosed by an action in the nature of an action to foreclose a mortgage as provided in § 105-374. The purchaser, his heirs and assigns, shall also have a lien for other taxes and special assessments on the real property paid by him after he acquired the tax sale certificate, whether the taxes and special assessments were charged before or after the certificate was acquired, and that lien shall have the same priority as the lien represented by the certificate.

(b) Payments on Tax Sale Certificates. Payments made on any tax lien sale certificate shall be made to the tax collector for the use of the owner of the certificate, and all such payments shall be credited by the tax collector on his copy of the certificate and shall be remitted to the owner of the certificate upon proper receipt therefor. The tax collector shall be liable on his bond to the holder of the certificate for failure to account for or to remit payments received by him on the certificate.

(c) Assignment of Tax Sale Certificates. The private owner of a tax lien sale certificate may assign it at any time, but the assignment shall not be effective until the tax collector has received written notice thereof from the assignor.

§ 105-372. Assignment of tax liens by taxing unit after lien sale. --

(a) Procedures. At any time after the sale of tax liens, a taxing unit may assign any lien that it purchases to any person who pays an amount which, if paid by the taxpayer, would be sufficient to discharge the lien. The assignment shall be made in accordance with one of the following two procedures, whichever is appropriate.

- (1) If the tax sale certificate was issued to the taxing unit following the tax lien sale, the tax collector shall assign it to the person making the payment, and the tax collector shall file the copy of the certificate showing the assignment in the manner provided by § 105-370(b) for certificates originally issued to private purchasers.
- (2) If no tax sale certificate was issued to the taxing unit following the tax lien sale and if the person making payment is one other than the taxpayer, the tax collector shall immediately issue a tax sale certificate to the taxing unit, dating it as of the day of the lien sale, and assign it to the person making payment as prescribed in subdivision (a) (1), above. However, if in such a case the person making payment is the taxpayer, no tax sale certificate need be issued, but the tax collector shall deliver to the taxpayer both the original tax receipt (stamped or marked paid) and the tax collector's receipt showing the amount actually paid to release the tax lien.

(b) Release of Lien on Separate Parcels. If the tax lien on more than one parcel of the taxpayer's real property has been sold to the taxing unit, a person making payment after the lien sale shall have the right to pay the entire amount due plus the costs of advertising and selling the liens, with

interest on the total at the rate of twelve per cent (12%) per annum from the date of the lien sale. Should a person desire to obtain the release of the lien from fewer than all of the taxpayer's parcels of real property after the lien sale, he shall have the right to pay an amount sufficient under the provisions of § 105-362 to release one or more specified parcels plus the costs of advertising and selling the lien or liens to be released, with interest on the total at the rate of twelve per cent (12%) per annum from the date of the lien sale. To effect the release of a single parcel in such an instance:

- (1) If a separate tax sale certificate for the parcel to be released was issued to the taxing unit at the tax lien sale, the tax collector shall proceed as provided in subdivision (a) (1), above.
- (2) If a single tax sale certificate covering more than one parcel of real property was issued to the taxing unit at the lien sale, the tax collector shall prepare two new certificates, one for the parcel to be released (which he shall then assign to the person making payment) and one for the parcels not to be released; he shall then cancel the original certificate.
- (3) If no tax sale certificate was issued to the taxing unit at the tax lien sale, the tax collector shall proceed as provided in subdivision (a) (2), above.

§ 105-373. Settlements. -- (a) Annual Settlement of Tax Collector.

- (1) Preliminary Report. On the second Monday following the tax lien sale, the tax collector shall make a sworn report to the governing body of the taxing unit showing:
 - a. Action taken with respect to the lien sale; and
 - b. A list of the persons not owning real property whose personal property taxes remain unpaid. (To this list the tax collector shall append his statement under oath that he has made diligent efforts to collect the taxes due from the persons listed out of their personal property and by other means available to him for collection, and he shall report such other information concerning these taxpayers as may be of interest to or required by the governing body, including a report of his efforts to make collection outside the taxing unit under the provisions of § 105-364.)
- (2) Insolvents. Upon receiving the report required by subdivision (a) (1), above, the governing body of the taxing unit shall enter upon its minutes the names of persons owing taxes (but who listed no real property) whom it finds to be insolvent, and it shall by resolution designate the list entered in its minutes as the insolvent list to be credited to the tax collector in his settlement.
- (3) Settlement for Current Taxes. On the first Monday of July the tax collector shall make full settlement with the governing body of the taxing unit for all taxes in his hands for collection for the preceding fiscal year. In the settlement the tax collector shall be charged with:
 - a. The total amount of all taxes in his hands for collection for the year, including amounts originally charged to him

- and all amounts subsequently charged on account of discoveries;
- b. All penalties, interest, and costs collected by him in connection with taxes for the current year; and
- c. All other sums collected by him.

The tax collector shall be credited with:

- a. All sums representing taxes for the year deposited by him to the credit of the taxing unit or receipted for by a proper official of the unit;
- b. Releases duly allowed by the governing body;
- c. The principal amount of taxes included in liens sold to the taxing unit, for which amount the collector shall produce tax lien sale certificates or tax receipts duly marked or stamped in accordance with § 105-370;
- d. The principal amount of taxes included in the insolvent list determined in accordance with subdivision (a)(2), above;
- e. Discounts allowed by law; and
- f. Commissions (if any) lawfully payable to the tax collector as compensation.

The tax collector shall be liable on his bond for both honesty and faithful performance of duty; for any deficiencies; and, in addition, for all criminal penalties provided by law.

The settlement, together with the action of the governing body with respect thereto, shall be entered in full upon the minutes of the governing body.

- (4) Disposition of Tax Receipts after Settlement. Uncollected taxes allowed as credits in the settlement prescribed in subdivision (a)

(3), above, whether represented by tax liens sold to the taxing unit or included in the list of insolvents, shall, for purposes of collection, be recharged to the tax collector or charged to some other person designated by the governing body of the taxing unit under statutory authority.

The person charged with uncollected taxes shall:

- a. Give bond satisfactory to the governing body;
- b. Receive the tax receipts, tax sale certificates, and tax records representing the uncollected taxes;
- c. Have and exercise all powers and duties conferred or imposed by law upon tax collectors; and
- d. Receive compensation as determined by the governing body.

(b) Settlements for Delinquent Taxes. Annually, at the time prescribed for the settlement provided in subdivision (a) (3), above, all persons having in their hands for collection any taxes for years prior to the year involved in the settlement shall settle with the governing body of the taxing unit for collections made on each such year's taxes. The settlement for the taxes for prior years shall be made in whatever form is satisfactory to the chief accounting officer and the governing body of the taxing unit, and it shall be entered in full upon the minutes of the governing body.

(c) Settlement at End of Term. Whenever any tax collector fails to succeed himself at the end of his term of office, he shall, on the last business day of his term, make full and complete settlement for all taxes (current or delinquent) in his hands and deliver the tax records, tax receipts, tax sale certificates, and accounts to his successor in office. The settlement shall be made in whatever form is satisfactory to the chief accounting officer and the governing body of the taxing unit, and it shall be entered in full upon the minutes of the governing body.

(d) Settlement upon Vacancy During Term. When a tax collector voluntarily resigns, he shall, upon his last day in office, make full settlement (in the manner provided in subdivision (c), above,) for all taxes in his hands for collection. In default of such a settlement, or in case of a vacancy occurring during a term for any reason, it shall be the duty of the chief accounting officer or, in the discretion of the governing body, of some other qualified person appointed by it immediately to prepare and submit to the governing body a report in the nature of a settlement made on behalf of the former tax collector. The report, together with the governing body's action with respect thereto, shall be entered in full upon the minutes of the governing body. Whenever a settlement must be made in behalf of a former tax collector, as provided in this subdivision (d), the governing body may deliver the tax receipts, tax records, and tax sale certificates to a successor collector immediately upon the occurrence of the vacancy, or it may make whatever temporary arrangements for the collection of taxes as may be expedient, but in no event shall any person be permitted to collect taxes until he has given bond satisfactory to the governing body.

(e) Effect of Approval of Settlement. Approval of any settlement by the governing body does not relieve the tax collector or his bondsmen of liability for any shortage actually existing at the time of the settlement and thereafter discovered; nor does it relieve the collector of any criminal liability.

(f) Penalties. In addition to any other civil or criminal penalties provided by law, any member of a governing body of a taxing unit, tax collector, or chief accounting officer who fails to perform any duty imposed upon him by this section shall be guilty of a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court.

(g) Relief from Collecting Insolvents. The governing body of any taxing unit may, in its discretion, relieve the tax collector of the charge of taxes owed by persons on the insolvent list that are five or more years past due when it appears to the governing body that such taxes are uncollectible.

§ 105-374. Foreclosure of tax lien by action in nature of action to foreclose a mortgage.--(a) General Nature of Action. The foreclosure action authorized by this section shall be instituted in the appropriate division of the general court of justice in the county in which the real property is situated and shall be an action in the nature of an action to foreclose a mortgage.

(b) Availability of Procedure.

(1) Taxing Units. Taxing units may proceed under this section, either on the original tax lien created by § 105-355(a) or on the lien acquired at the tax lien sale held under § 105-369, with or without a lien sale certificate; and the amount of recovery in either case shall be the same. To this end, it is hereby declared that the original attachment of the tax lien under § 105-355(a) is sufficient to support a tax foreclosure action by a taxing unit, that the issuance of tax lien sale certificates to a taxing unit is a matter of convenience in record keeping within the discretion of the governing body of the taxing unit, and that issuance of such certificates is not a prerequisite to perfection of the tax lien.

(2) Private Purchasers. Foreclosure under this section shall be the sole remedy of holders of tax lien certificates other than taxing units, and actions for the foreclosure of tax liens under this section by such persons shall be brought no earlier than six months after the lien sale provided for in § 105-369.

(c) Parties; Summonses. The listing taxpayer and spouse (if any), the current owner, all other taxing units having tax liens, all other lienholders

of record, and all persons who would be entitled to be made parties to a court action (in which no deficiency judgment is sought) to foreclose a mortgage on such property, shall be made parties and served with summonses in the manner provided by § 1A-1, Rule 4.

The fact that the listing taxpayer or any other defendant is a minor, is incompetent, or is under any other disability shall not prevent or delay the tax lien sale or the foreclosure of the tax lien; and all such persons shall be made parties and served with summons in the same manner as in other civil actions.

Persons who have disappeared or who cannot be located and persons whose names and whereabouts are unknown, and all possible heirs or assignees of such persons, may be served by publication; and such persons, their heirs, and assignees may be designated by general description or by fictitious names in such an action.

(d) Complaint as Lis Pendens. The complaint in an action brought under this section shall, from the time it is filed in the office of the clerk of superior court, serve as notice of the pendency of the foreclosure action, and every person whose interest in the real property is subsequently acquired or whose interest therein is subsequently registered or recorded shall be bound by all proceedings taken in the foreclosure action after the filing of the complaint in the same manner as if those persons had been made parties to the action. It shall not be necessary to have the complaint cross-indexed as a notice of action pending to have the effect prescribed by this subdivision (d).

(e) Subsequent Taxes. The complaint in a tax foreclosure action brought under this section by a taxing unit shall, in addition to alleging the tax lien on which the action is based, include a general allegation of subsequent

taxes which are or may become a lien on the same real property in favor of the plaintiff unit. Thereafter it shall not be necessary to amend the complaint to incorporate the subsequent taxes by specific allegation. In case of redemption before confirmation of the foreclosure sale, the person redeeming shall be required to pay, before the foreclosure action is discontinued, at least all taxes on the real property which have at the time of discontinuance become due to the plaintiff unit, plus penalties, interest, and costs thereon. Immediately prior to judgment ordering sale in a foreclosure action (if there has been no redemption prior to that time), the tax collector or the attorney for the plaintiff unit shall file in the action a certificate setting forth all taxes which are a lien on the real property in favor of the plaintiff unit (other than taxes the amount of which has not been definitely determined).

Any plaintiff in a tax foreclosure action (other than a taxing unit) may include in his complaint, originally or by amendment, all other taxes and special assessments paid by him which were liens on the same real property.

(f) Joinder of Parcels. All real property within the taxing unit subject to liens for taxes levied against the same taxpayer for the first year involved in the foreclosure action may be joined in one action. However, if real property is transferred by the listing taxpayer subsequent to the first year involved in the foreclosure action, all subsequent taxes, penalties, interest, and costs (for which the property is ordered sold under the terms of this subchapter) shall be prorated to such property in the same manner as if payments were being made to release such property from the tax lien under the provisions of § 105-356(b).

(g) Special Benefit Assessments. A cause of action for the foreclosure of the lien of any special benefit assessments may be included in any complaint filed under this section.

(h) Joint Foreclosure by Two or More Taxing Units. Liens of different taxing units on the same parcel of real property, representing taxes in the hands of the same tax collector, shall be foreclosed in one action. Liens of different taxing units on the same parcel of real property, representing taxes in the hands of different tax collectors, may be foreclosed in one action in the discretion of the governing bodies of the taxing units.

The lien of any taxing unit made a party defendant in any foreclosure action shall be alleged in an answer filed by the taxing unit, and the tax collector of each answering unit shall, prior to judgment ordering sale, file a certificate of subsequent taxes similar to that filed by the tax collector of the plaintiff unit, and the taxes of each answering unit shall be of equal dignity with the taxes of the plaintiff unit. Any answering unit may, in case of payment of the plaintiff unit's taxes, continue the foreclosure action until all taxes due to it have been paid, and it shall not be necessary for any answering unit to file a separate foreclosure action or to proceed under § 105-375 with respect to any such taxes.

If a taxing unit properly served as a party defendant in a foreclosure action fails to answer and file the certificate provided for in the preceding paragraph, all of its taxes shall be barred by the judgment of sale except to the extent that the purchase price at the foreclosure sale (after payment of costs and of the liens of all taxing units whose liens are properly alleged by complaint or answer and certificates) may be sufficient to pay such taxes. However, if a defendant taxing unit is plaintiff in another foreclosure action pending against the same property, or if it has begun a proceeding under § 105-375, its answer may allege that fact in lieu of alleging its liens, and the court, in its discretion, may order consolidation of such actions or such other disposition thereof (and such disposition of the costs therein) as it may deem advisable. Any such order may be made by the clerk of the superior court subject to appeal in the same manner as appeals are taken from other orders of the clerk.

(i) Costs. Subject to the provisions of this subdivision (i), costs may be taxed in any foreclosure action brought under this section in the same manner as in other civil actions. When costs are collected, either by payment prior to the sale or upon payment of the purchase price at the foreclosure sale, the fees allowed officers shall be paid to those entitled to receive them. In foreclosure actions in which the plaintiff is a taxing unit, no prosecution bond shall be required.

The word "costs," as used in this subdivision (i), shall be construed to include one reasonable attorney's fee for the plaintiff in such amount as the court shall, in its discretion, determine and allow. When a taxing unit is made a party defendant in a tax foreclosure action and files answer therein, there may be included in the costs an attorney's fee for the defendant unit in such amount as the court shall, in its discretion, determine and allow. The governing body of any taxing unit may, in its discretion, pay a smaller or greater sum than that allowed as costs to its attorney as a suit fee, and the governing body may allow a reasonable commission to its attorney on taxes collected by him after they have been placed in his hands; or the governing body may arrange with its attorney for the handling of tax foreclosure suits on a salary basis or may make any other reasonable agreement with its attorney or attorneys. Any arrangement made between a taxing unit and its attorney may provide that attorneys' fees collected as costs in foreclosure actions be collected for the use of the taxing unit.

In any foreclosure action in which real property is actually sold after judgment, costs shall include a commissioner's fee to be fixed by the court, not exceeding five percent (5%) of the purchase price; and in case of redemption between the date of sale and the order of confirmation, the fee shall be

added to the amount otherwise necessary for redemption. In case more than one sale is made of the same property in any action, the commissioner's fee may be based on the highest amount bid, but the commissioner shall not be allowed a separate fee for each such sale. The governing body of any plaintiff unit may request the court to appoint as commissioner a salaried official, attorney, or employee of the unit and, when the requested appointment is made, may require that the commissioner's fees, when collected, be paid to the plaintiff unit for its use.

(j) Contested Actions. Any action brought under this section in which an answer raising an issue requiring trial is filed within the time allowed by law shall be entitled to a preference as to time of trial over all other civil actions.

(k) Judgment of Sale. Any judgment in favor of the plaintiff or any defendant taxing unit in an action brought under this section shall order the sale of the real property or so much thereof as may be necessary for the satisfaction of:

- (1) Taxes adjudged to be liens in favor of the plaintiff (other than taxes the amount of which has not been definitely determined) together with penalties, interest, and costs thereon; and
- (2) Taxes adjudged to be liens in favor of other taxing units (other than taxes the amount of which has not yet been definitely determined) if those taxes have been alleged in answers filed by the other taxing units, together with penalties, interest, and costs thereon.

The judgment shall appoint a commissioner to conduct the sale and shall order that the property be sold in fee simple, free and clear of all interests,

rights, claims, and liens whatever except that the sale shall be subject to taxes the amount of which cannot be definitely determined at the time of the judgment, taxes and special assessments of taxing units which are not parties to the action, and, in the discretion of the court, taxes alleged in other tax foreclosure actions or proceedings pending against the same real property.

In all cases in which no answer is filed within the time allowed by law, the clerk of the superior court may render the judgment subject to appeal in the same manner as appeals are taken from other judgments of the clerk.

(1) Advertisement of Sale. The sale shall be advertised, and all necessary resales shall be advertised, in the manner provided by Article 29A of Chapter 1 of the General Statutes or by any statute enacted in substitution therefor.

(m) Sale. The sale shall be by public auction to the highest bidder and shall, in accordance with the judgment, be held at the courthouse door on any day of the week except a Sunday or legal holiday. (In actions brought by a municipality that is not a county seat, the court may, in its discretion, direct that the sale be held at the city or town hall door.) The commissioner conducting the sale may, in his discretion, require from any successful bidder a deposit equal to not more than twenty percent (20%) of his bid, which deposit, in the event that the bidder refuses to take title and a resale becomes necessary, shall be applied to pay the costs of sale and any loss resulting. (However, this provision shall not deprive the commissioner of his right to sue for specific performance of the contract.) No deposit shall be required of a taxing unit that has made the highest bid at the foreclosure sale.

(n) Report of Sale. Within three days following the foreclosure sale the commissioner shall report the sale to the court giving full particulars thereof.

(o) Exceptions and Increased Bids. At any time within ten days after the commissioner files his report of the foreclosure sale, any person having an interest in the real property may file exceptions to the report, and at any time within that ten-day period an increased bid may be filed in the amount specified by and subject to the provisions (other than provisions in conflict herewith) of Article 29A of Chapter 1 of the General Statutes or the provisions (other than provisions in conflict herewith) of any law enacted in substitution therefor. In the absence of exceptions or increased bids, the court may, whenever it deems such action necessary for the best interests of the parties, order resale of the property.

(p) Judgment of Confirmation. At any time after the expiration of ten days from the time the commissioner files his report, if no exception or increased bid has been filed, the commissioner may apply for judgment of confirmation, and in like manner he may apply for such a judgment after the court has passed upon exceptions filed, or after any necessary resales have been held and reported and ten days have elapsed. The judgment of confirmation shall direct the commissioner to deliver the deed upon payment of the purchase price. This judgment may be rendered by the clerk of superior court subject to appeal in the same manner as appeals are taken from other judgments of the clerk.

(q) Application of Proceeds; Commissioner's Final Report. After delivery of the deed and collection of the purchase price, the commissioner shall apply the proceeds as follows:

- (1) First, to payment of all costs of the action, including the commissioner's fee and the attorney's fee, which costs shall be paid to the officials or funds entitled thereto;
- (2) Then to the payment of taxes, penalties, and interest for which the real property was ordered to be sold, and in case the funds remaining are insufficient for this purpose, they shall be distributed pro rata to the various taxing units for whose taxes the property was ordered sold;
- (3) Then pro rata to the payment of any special benefit assessments for which the property was ordered sold, together with interest and costs thereon;
- (4) Then pro rata to payment of taxes, penalties, interest, and costs of taxing units that were parties to the foreclosure action but which filed no answers therein;
- (5) Then pro rata to payment of special benefit assessments of taxing units that were parties to the foreclosure action but which filed no answers therein, together with interest and costs thereon;
- (6) And any balance then remaining shall be paid in accordance with any directions given by the court and, in the absence of such directions, shall be paid into court for the benefit of the persons entitled thereto. (If the clerk is in doubt as to who is entitled to the surplus or if any adverse claims are asserted thereto, the clerk shall hold the surplus until rights thereto are established in a special proceeding pursuant to § 1-339.71.)

Within five days after delivering the deed, the commissioner shall make

a full report to the court showing delivery of the deed, receipt of the purchase price, and the disbursement of the proceeds, accompanied by receipts evidencing all such disbursements.

(r) Purchase and Resale by Taxing Unit. The rights of a taxing unit to purchase real property at a foreclosure sale and resell it are governed by § 105-376.

§ 105-375. In rem method of foreclosure. -- (a) Intent of Section.

It is hereby declared to be the intention of this section that proceedings brought under it shall be strictly in rem. It is further declared to be the intention of this section to provide, as an alternative to § 105-374, a simple and inexpensive method of enforcing payment of taxes necessarily levied, to the knowledge of all persons, for the requirements of local governments in this State; and to recognize, in authorizing this proceeding, that all persons owning interests in real property know or should know, without special notice thereof, that the tax lien on their real property may be foreclosed and the property sold for failure to pay taxes.

(b) Docketing Certificate of Taxes as Judgment. In lieu of following the procedure set forth in § 105-374, the governing body of any taxing unit may direct the tax collector to file, no earlier than six months following the sale of tax liens, with the clerk of superior court a certificate showing the following: the name of the taxpayer listing real property on which the taxes are a lien, together with the amount of taxes, penalties, interest, and costs that are a lien thereon; the year or years for which the taxes are due; and a description of the property sufficient to permit its identification by parol testimony. The clerk of superior court shall enter the certificate either in a special book entitled "Tax Judgment Docket for Taxes for the Year . . ." (and index it therein in the name of the listing taxpayer) or in a special continuing book or books entitled "Tax Judgment Docket for Taxes for the Years Beginning . . ." (and index it in the general judgment index in the name of the listing taxpayer). The fees for docketing and indexing the certificate shall be payable to the clerk of superior court at the time the taxes are collected or the property is sold.

(c) Notice to Listing Taxpayer. The tax collector filing the certificate provided for in subdivision (b), above, shall, at least two weeks prior to docketing the judgment, send a registered or certified letter to the listing taxpayer at his last known address, stating that the judgment will be docketed and that execution will issue thereon in the manner provided by law. Receipt of the letter by the listing taxpayer, or receipt of actual notice of the proceeding by the taxpayer or other interested persons, shall not be required for the validity or priority of the judgment or for the validity of the title acquired by the purchaser at the execution sale.

(d) Effect of Docketing Certificate of Taxes Due. Immediately upon the docketing and indexing of a certificate as provided in subdivision (b), above, the taxes, penalties, interest, and costs shall constitute a valid judgment against the real property described therein, with the priority provided for tax liens in § 105-356. The judgment, except as expressly provided in this section, shall have the same force and effect as a duly rendered judgment of the superior court directing sale of the property for the satisfaction of the tax lien, and it shall bear interest at the rate of six percent (6%) per annum.

(e) Special Assessments. Street, sidewalk, and other special assessments may be included in any judgment for taxes taken under this section; or such special assessments may be included in a separate judgment docketed under this section, which is hereby declared to be made available as a method of foreclosing the lien of special assessments. When used to foreclose the lien of special assessments, the procedure may be instituted at any time after the assessment or installment falls due and remains unpaid; the six months' waiting period required by subdivision (b), above, shall not apply to the foreclosure of special assessments.

(f) Motion to Set Aside. At any time prior to the issuance of execution, any person having an interest in the real property to be foreclosed may appear before the clerk of superior court and move to set aside the judgment on the ground that the tax has been paid or that the tax lien on which the judgment is based is invalid.

(g) Cancellation Upon Payment. Upon payment in full of any judgment docketed under this section, together with interest thereon and costs accrued to the date of payment, the tax collector receiving payment shall certify the fact thereof to the clerk of superior court and cancel the judgment.

(h) Relationship Between § 105-374 and This Section. If, before the issuance of execution on the judgment under subdivision (i), below, the taxing unit is made a defendant in a foreclosure action brought against the property under § 105-374, it shall file an answer in that proceeding and thereafter all proceedings shall be governed by order of the court in accordance with that section.

(i) Issuance of Execution. At any time after six months and before two years from the indexing of the judgment as provided in subdivision (b), above, execution shall be issued at the request of the tax collector in the same manner as executions are issued upon other judgments of the superior court, and the real property shall be sold by the sheriff in the same manner as other real property is sold under execution with the following exceptions:

- (1) No debtor's exemption shall be allowed.
- (2) In lieu of personal service of notice on the owner of the property, registered or certified mail notice shall be mailed to the listing taxpayer at his last known address at least one week prior to the day fixed for the sale.

- (3) The sheriff shall add to the amount of the judgment as costs of the sale any postage expenses incurred by the tax collector and the sheriff in foreclosing under this section.
- (4) In any advertisement or posted notice of sale under execution, the sheriff may (and at the request of the governing body shall) combine the advertisements or notices for properties to be sold under executions against the properties of different taxpayers in favor of the same taxing unit or group of units; however, the property included in each judgment shall be separately described and the name of the listing taxpayer specified in connection with each.

The purchaser at the execution sale shall acquire title to the property in fee simple free and clear of all claims, rights, interests, and liens except the liens of other taxes or special assessments not paid from the purchase price and not included in the judgment.

(j) Attorney's Fee. The governing body of the taxing unit may make whatever arrangement it deems satisfactory for compensating an attorney rendering assistance or advice in foreclosure proceedings brought under this section, but the attorney's fee shall not be added to the judgment as part of the costs of the action.

(k) Consolidation of Liens. By agreement between the governing bodies, two or more taxing units may consolidate their tax liens for the purpose of docketing a judgment, or may have one execution issued for separate judgments, against the same property. In like manner, one execution may issue for separate judgments in favor of one or more taxing units against the same property for different years' taxes.

(1) Purchase and Resale by Taxing Unit. The rights of a taxing unit to purchase real property at a foreclosure sale and resell it are governed by § 105-376.

(m) Procedure if Section Declared Unconstitutional. If any provisions of this section are declared invalid or unconstitutional by the Supreme Court of North Carolina, a United States District Court of three judges, the United States Circuit Court of Appeals, or the United States Supreme Court, all taxing units that have proceeded under this section shall have five years from the date of the filing of the opinion (or, in the case of appeal, from the date of the filing of the opinion on appeal) in which to institute foreclosure actions under § 105-374 for all taxes included in judgments taken under this section and for subsequent taxes due or which, but for purchase of the property by the taxing unit, would have become due; and such judicial decision shall not have the effect of invalidating the tax lien or disturbing its priority.

§ 105-376. Taxing unit as purchaser at foreclosure sale; payment of purchase price; resale of property acquired by taxing unit. --

(a) Taxing Unit as Purchaser. Any taxing unit (or two or more taxing units jointly) may bid at a foreclosure sale conducted under § 105-374 or § 105-375, and any taxing unit that becomes the successful bidder may assign its bid at any time by private sale for not less than the amount of the bid.

(b) Payment of Purchase Price by Taxing Units; Status of Property Purchased by Taxing Units. Any taxing unit that becomes the purchaser at a tax foreclosure sale may, in the discretion of its governing body, pay only that part of the purchase price that would not be distributed to it and other taxing units on account of taxes, penalties, interest, and such costs as accrued prior to the initiation of the foreclosure action under § 105-374 or docketing of a judgment under § 105-375. Thereafter, in such a case, the purchasing taxing unit shall hold the property for the benefit of all taxing units that have an interest in the property as defined in this subdivision (b). All net income from real property so acquired and the proceeds thereof, when resold, shall be first used to reimburse the purchasing unit for disbursements actually made by it in connection with the foreclosure action and the purchase of the property, and any balance remaining shall be distributed to the taxing units having an interest therein in proportion to their interests. The total interest of each taxing unit, including the purchasing unit, shall be determined by adding:

- (1) The taxes of the unit, with penalties, interest, and costs (other than costs already reimbursed to the purchasing unit) to satisfy which the property was ordered sold;
- (2) Other taxes of the unit, with penalties, interest, and costs

which would have been paid in full from the purchase price had the purchase price been paid in full;

- (3) Taxes of the unit, with penalties, interest, and costs to which the foreclosure sale was made subject; and
- (4) The principal amount of all taxes which became liens on the property after purchase at the foreclosure sale or which would have become liens thereon but for the purchase, but no amount shall be included for taxes for years in which (on the day as of which property was to be listed for taxation) the property was being used by the purchasing unit for a public purpose.

If the amount of net income and proceeds of resale distributable exceeds the total interests of all taxing units defined in this subdivision (b), the remainder shall be applied to any special benefit assessments to satisfy which the sale was ordered or to which the sale was made subject, and any balance remaining shall accrue to the purchasing unit.

When any real property that has been purchased as provided in this section is permanently dedicated to use for a public purpose, the purchasing unit shall make settlement with other taxing units having an interest in the property (as defined in this subdivision) in such manner and in such amount as may be agreed upon by the governing bodies; and if no agreement can be reached, the amount to be paid shall be determined by a resident judge of the superior court in the district in which the property is situated.

Nothing in this section shall be construed as requiring the purchasing unit to secure the approval of other interested taxing units before reselling the property or as requiring the purchasing unit to pay other interested taxing units in full if the net income and resale price are insufficient to make such payments.

Any taxing unit purchasing property at a foreclosure sale may, in the discretion of its governing body, instead of following the foregoing provisions of this section, make full payment of the purchase price, and thereafter it shall hold the property as sole owner in the same manner as it holds other real property, subject only to taxes and special assessments, with penalties, interest, and costs, to which the sale was made subject.

(c) Resale of Real Property Purchased by Taxing Units. Real property purchased at a tax foreclosure sale by a taxing unit may be resold at any time (for such price as the governing body of the taxing unit may approve) at a sale conducted in the manner provided by law for sales of other real property of the taxing unit. However, a purchasing taxing unit, in the discretion of its governing body, may resell such property to the former owner or to any other person formerly having an interest in the property at private sale for an amount not less than the taxing unit's interest therein if it holds the property as sole owner or for an amount not less than the total interests of all taxing units (other than special assessments due the taxing unit holding title) if it holds the property for the benefit of all such units.

§ 105-377. Time for contesting validity of tax foreclosure title. --

No action or proceeding shall be brought to contest the validity of any title to real property acquired by a taxing unit or by a private purchaser in any tax foreclosure action or proceeding authorized by this subchapter or by other laws of this State in force at the time the title was acquired, nor shall any motion to reopen or set aside the judgment in any such tax foreclosure action or proceeding be entertained after one year from the date on which the deed is recorded. In cases of deeds recorded prior to April 3, 1939, however, such an action or proceeding may be brought or motion entertained within one year after that date, but this shall not be construed as enlarging the time within which to bring such an action or proceeding or to entertain such a motion.

§ 105-378. Limitation on use of remedies. -- (a) Use of Remedies Barred. No county or municipality may maintain an action or procedure to enforce any remedy provided by law for the collection of taxes or the enforcement of any tax liens (whether the taxes or tax liens are evidenced by the original tax receipts, tax sales certificates, or otherwise) unless the action or procedure is instituted within ten years from the date the taxes became due.

(b) Not Applicable to Special Assessments. The provisions of subdivision (a), above, shall not be construed to apply to the lien of special assessments.

(c) Applicable Date of Section. This section shall take effect on July 1, 1972. Until that date, the provisions of § 105-422 (as it appears in the 1969 Cumulative Supplement to Volume 2D of the General Statutes) and § 105-423.1 (as it appears in the 1965 Replacement Volume of Volume 2D of the General Statutes) shall continue in effect.

Article 27.

Refunds and Remedies.

§ 105-379. Restriction on use of injunction and claim and delivery. -- (a) Grounds for Injunction. No court may enjoin the collection of any tax, the sale of any tax lien, or the sale of any property for nonpayment of any tax imposed under the authority of this subchapter except upon a showing that the tax (or some part thereof) is illegal or levied for an illegal or unauthorized purpose.

(b) No Order in Claim and Delivery. No court may issue any order in claim and delivery proceedings or otherwise for the taking of any personal property levied on or attached by the tax collector under the authority of this subchapter.

§ 105-380. No taxes to be released. -- The governing body of a taxing unit is prohibited from releasing, discharging, remitting, commuting, or compromising all or any portion of the taxes levied against any property within its jurisdiction except as expressly provided in this subchapter.

Taxes that have been released, discharged, remitted, commuted, or compromised in violation of this section shall be deemed to be unpaid and shall be collectible by any means provided by this subchapter, and the existence and priority of any tax lien on property shall not be affected by the unauthorized release, discharge, remission, commutation, or compromise of the tax liability.

Any tax that has been released, discharged, remitted, commuted, or compromised in violation of this section may be recovered from any member or members of the governing body who voted for the release, discharge, remission, commutation, or compromise by civil action instituted by any resident of the taxing unit, and when collected, the recovered tax shall be paid to the treasurer of the taxing unit.

The provisions of this section are not intended to restrict or abrogate the powers of a board of equalization and review or any agency exercising the powers of such a board.

§ 105-381. Taxpayer's remedies. -- (a) Payment. Any person asserting a defense to the payment or enforcement of a tax upon his property shall pay the tax to the collector, and such a payment shall not prejudice any defense or rights he may have. At any time within thirty days after payment, the taxpayer may make a demand for refund of the tax paid by submitting to the governing body of the taxing unit a written statement of his defense to payment or enforcement of the tax and a claim for a refund thereof.

(b) Action of Governing Body. Upon receiving a taxpayer's written statement of defense and claim for refund, the governing body of the taxing unit shall determine whether the tax, or any part of it, was illegal or levied for an illegal purpose and shall either refund that portion of the amount paid that was in excess of the correct tax liability or notify the taxpayer in writing that no refund will be made. The action of the governing body on each claim for refund shall be recorded in its minutes.

(c) Suit for Recovery of Taxes. If, within ninety days after the date the taxpayer's claim was submitted under subdivision (a), above, the governing body of the taxing unit has failed to refund the full amount claimed by the taxpayer, has notified the taxpayer that no refund will be made, or has taken no action on the claim, the taxpayer may bring a civil action against the taxing unit for the amount claimed but not refunded. Such a suit shall be brought in the appropriate division of the general court of justice of the county in which the taxing unit is located. If, upon the trial, it is determined that the

tax or any part of it was illegal or levied for an illegal purpose, judgment shall be rendered therefor, with interest thereon at six percent (6%) per annum, plus costs, and the judgment shall be collected as in other civil actions.

§ 105-382. Discretionary authority to refund taxes illegally collected. -- (a) If the procedures specified in subdivision (b), below, are complied with, the governing body of a taxing unit may refund a tax or any portion of a tax that should not have been imposed but which was imposed through clerical error or which was illegal or levied for an illegal purpose. The exercise of the authority granted by this section is entirely within the discretion of the governing body, and no taxpayer may enforce a demand for refund under the provisions of this section.

(b) The discretionary authority granted by subdivision (a), above, shall not be exercised unless:

- (1) Within three years from the date on which a tax was due to be paid, the taxpayer makes a written demand for refund upon the governing body of the taxing unit to which the tax was paid on the ground that the taxing unit required its payment through clerical error or that it was illegal or levied for an illegal purpose.
- (2) After receipt of such a written demand, the governing body adopts and records in its minutes a resolution finding the asserted clerical error or illegality to be a fact.

Special Duties to Pay Taxes.

§ 105-383. Fiduciaries to pay taxes. -- (a) Duty to Pay. It shall be the duty of every guardian, executor, administrator, agent, trustee, receiver, or other fiduciary having care or control of any real or personal property to pay the taxes thereon out of the trust funds in his hands.

(b) Liability for Failure to Pay. Any fiduciary who fails to pay the taxes on property in his care or control when trust funds are available to him for that purpose shall be personally liable for the taxes. This liability may be enforced by a civil action brought in the name of the tax collector of the taxing unit to which the taxes are owed against the fiduciary in an appropriate division of the general court of justice of the county in which the taxing unit is located.

(c) Liability for Sale of Property. Any fiduciary who suffers property in his care or control to be sold by reason of his negligence in failing to pay the taxes thereon when available funds were in his hands shall be liable to his ward, principal, or cestui que trust for all actual damages incurred as a result of his neglect.

(d) Effect of Section. This section shall not have the effect of relieving property and estates held in trust or under the control of fiduciaries from the lien of property taxes.

§ 105-384. Duties and liabilities of life tenant. -- (a) If real or personal property is held by a tenant for life or by a tenant for the life of another, it shall be the duty of the life tenant to pay the taxes imposed on the property.

(b) Any remainderman or reversioner of real or personal property who pays the taxes thereon may recover the money so paid in an action against the life tenant of the property; in the case of real property, the action may be brought only in the appropriate division of the general court of justice of the county in which the real property is located.

(c) Any tenant for life of real or personal property who suffers the property to be foreclosed and sold or sold under levy for failure to pay the taxes thereon shall be liable to the remainderman or to the reversioner for any damages incurred.

§ 105-385. Duty to pay taxes on real property; judicial sales; sales under powers; governmental purchasers. -- (a) Judicial Sales. In all civil actions and special proceedings in which the sale of any real property is ordered, the judgment shall provide for the payment of all taxes then constituting a lien upon the property and all special assessments or installments thereof then due, and the tax liens and special assessments shall be satisfied from the proceeds of the sale before the proceeds are disbursed. The judgment in such a civil action or special proceeding shall adjust the disbursements for taxes and special assessments between the parties to the action or special proceeding in accordance with their respective rights.

(b) Sales under Powers. Any person who sells real property under a power of sale conferred upon him by a deed, will, power of attorney, mortgage, deed of trust, or assignment for the benefit of creditors shall from the proceeds of the sale first satisfy all taxes constituting a lien upon the real property and all special assessments or installments thereof then due unless the notice of sale provided that the property would be sold subject to tax liens and special assessments, and it was so sold.

(c) Governmental Purchasers. Any agency, department, or institution of the State of North Carolina and any county or municipal corporation that purchases real property shall satisfy all taxes constituting a lien upon the property purchased and all special assessments or installments thereof then due by deducting the amount of the taxes and special assessments from the purchase price and paying it to the proper taxing unit or units. Any agency, department, or institution of the State and any county or municipal corporation that fails to make the deductions and payments required by this subdivision (c) shall be liable

to the taxing unit or units to which the taxes and special assessments are owed for the amount thereof. This liability may be enforced in a civil action brought by the taxing unit or units to which the taxes and special assessments are owed in the appropriate trial division of the general court of justice of the county in which the property is located; this remedy shall be in addition to any remedies the taxing unit may have against the grantor of the property.

§ 105-386. Tax paid by holder of lien; remedy. -- If any person having a lien or encumbrance of any kind upon real property shall pay the taxes that constitute a lien upon the real property:

- (1) He shall thereby acquire a lien upon the real property from the time of payment, which lien shall be superior to all other liens and which may be enforced by an action in the appropriate division of the general court of justice of the county in which the real property is situated.
- (2) He may, by an action for moneys paid to the use of the owner of the real property at the time of payment, recover the amount paid.

Article 29.

Validations.

§ 105-387. Sales for 1930 on dates other than first Monday in June validated. -- All sales of land for failure to pay taxes held or conducted by any sheriff or any tax collector of any county, city, town, or other municipality during the year 1930, on any day subsequent to or other than the first Monday in June of said year, are hereby approved, confirmed, validated, and declared to be proper, valid, and legal sales of such land and legally binding in all respects, and all certificates of sale made and issued upon and in accordance with such sales are hereby approved and validated to all intents and purposes with such full force and legal effect as if said sales had been held and conducted on said first Monday of June, 1930.

§ 105-388. Tax sales for 1931-32 on day other than law provides and certificates validated. -- All sales of land for failure to pay taxes held or conducted by any sheriff or any tax collector of any county, city, town, or other municipality during the year 1931 and 1932, on any day subsequent to or other than the first Monday in June of said year, are hereby approved, confirmed, validated, and declared to be proper, valid, and legal sales of such land and legally binding in all respects, and all certificates of sale made and issued upon and in accordance with such sales approved and validated to all intents and purposes with such full force and legal effect as if said sales had been held and conducted on said first Monday of June, 1931 and 1932.

§ 105-389. Tax sales for 1933-34 and certificates validated. --

All sales of land for failure to pay taxes held or conducted by any sheriff or any tax collector of any county, city, town, or other municipality during the years 1933 and 1934, or on any date subsequent to or other than the date prescribed by law, and all certificates of sale executed and issued pursuant to and in accordance with such sales be and the same are hereby approved, confirmed, and validated and shall have the same force and legal effect as if said sales had been held and conducted on the date prescribed by law.

The board of county commissioners of any county or the governing board of any city, town, or other municipality may by resolution order the sheriff or tax collecting officer of the said county, city, town, or other municipality to advertise in the manner provided by law and sell all land for the taxes of any year levied by the said county, city, town, or other municipality, which land has not heretofore been legally sold for the failure to pay said taxes. The sale or sales herein authorized shall be held not later than the first Monday in September 1935, and certificates of sale shall be issued in accordance with and pursuant to said sale or sales in the same manner as if said sale or sales had been held and conducted as provided by law. Any sale held and conducted under the provisions of this paragraph and all certificates issued pursuant to such a sale shall be and the same are hereby approved, confirmed, and validated and shall have the same force and legal effect as if said sale had been held and conducted on the date prescribed by law.

All actions instituted in any county, city, town, or other municipality for the foreclosure of certificates of sale issued for the taxes of the years 1927, 1928, 1929, 1930, 1931 and 1932 subsequent to October 1, 1934, and all such actions instituted before October 1, 1935, shall be and the same are

hereby approved, validated, and declared to be legally binding and of the same force and effect as if said actions were instituted prior to October 1, 1934: Provided, that this section shall not be construed to repeal any private or local act passed by the General Assembly of 1935.

§ 105-390. Notices of sale for taxes by publication validated. --

All sales of real property under tax certificate foreclosures made between January 1, 1927, and March 13, 1937, where the original notice of sale was published for four successive weeks, and any notice of resale was published for two successive weeks, preceding said sales, whether the notice of sale was required to be published in a newspaper or at courthouse door, or both, shall be, and the same are in all respects validated as to publication of said notice: Provided said publication was completed as above set out within ten days of the date of the sale.

The provisions of this section shall not apply to the counties of Alleghany, Beaufort, Cabarrus, Camden, Carteret, Caswell, Currituck, Halifax, Harnett, Henderson, Hertford, Hyde, Iredell, Johnston, Jones, Macon, Mitchell, Moore, Nash, New Hanover, Perquimans, Pitt, Polk, Rowan, Rutherford, Scotland, Surry, Wake, Warren, Washington, and Wayne.

§ 105-391. Validation of sales and resales held pursuant to § 105-374. --

All sales or resales held prior to April 14, 1951, pursuant to § 105-374, where the advertisement was in accordance with §§ 1-327 and 1-328 as provided by such sections prior to their repeal, are validated to the same extent as if such advertisement were in accordance with Article 29A of Chapter 1 of the General Statutes; and all such sales, where the provisions of § 45-28 as to resales, as provided by such section prior to its repeal, were followed, are validated to the same extent as if the resale procedure provided for in Article 29A of Chapter 1 of the General Statutes had been followed.

§ 105-392. Validation of reconveyances of tax foreclosed property by county boards of commissioners. -- The action of county boards of commissioners taken prior to March 20, 1951, reconveying tax foreclosed property by private sale to the former owners or other interested parties for amounts not less than such counties' interest therein is hereby ratified, confirmed, and validated.

§ 105-393. Real property listings validated. -- Listings of any real estate not otherwise listed, which have been carried forward on the tax list of any person by the county supervisor of taxation, list taker or assessor, at the same assessed value of said property as it was valued at in the last quadrennial assessment of taxes, unless the value thereof has been changed by the board of county commissioners as provided by law, are hereby validated, and are hereby declared to be legal and valid listings of the same as if listed by the owner or owner's agent or by the chairman of the board of county commissioners or otherwise, as provided by law.

This section shall be retroactive so as to include the period of time from the first day of May, 1927, to and including the eleventh day of May, 1935.

The counties of Alamance, Ashe, Beaufort, Bertie, Brunswick, Cabarrus, Camden, Carteret, Clay, Currituck, Dare, Durham, Greene, Halifax, Harnett, Henderson, Hertfort, Hoke, Hyde, Iredell, Johnston, Macon, Moore, Northampton, Pasquotank, Pitt, Polk, Randolph, Richmond, Robeson, Rowan, Rutherford, Sampson, Surry, Transylvania, Wake, Warren, and Wayne are hereby exempted from the provisions of this section.

General Provisions.

§ 105-394. Immaterial irregularities.--Immaterial irregularities in the listing, appraisal, or assessment of property for taxation or in the levy or collection of the property tax or in any other proceeding or requirement of this subchapter shall not invalidate the tax imposed upon any property or any process of listing, appraisal, assessment, levy, collection, or any other proceeding under this subchapter.

The following are examples of immaterial irregularities:

- (1) The failure of list takers, tax supervisors, or members of boards of equalization and review to take and subscribe the oaths required of them.
- (2) The failure to sign the affirmation required on the abstract.
- (3) The failure to list, appraise, or assess any property for taxation or to levy any tax within the time prescribed by law.
- (4) The failure of the board of equalization and review to meet or to adjourn within the time prescribed by law or to give any required notice of its meetings and adjournment.
- (5) Any defect in the description upon any abstract, tax receipt, tax record, notice, advertisement, or other document, of real or personal property, if the description be sufficient to enable the tax collector or any person interested to determine what property is meant by the description. (In such cases the tax supervisor or tax collector may correct the description on the documents bearing the defective description, and the correct description shall be used in any documents later issued in tax foreclosure proceedings authorized by this subchapter.)

- (6) The failure of the collector to offer any tax lien on real property for sale at the time mentioned in the advertisement or notice of sale.
- (7) The failure of the collector to adjourn the tax lien sale from day to day or any irregularity or informality in the adjournment.
- (8) Any irregularity or informality in the order or manner in which tax liens on real property are offered for sale.
- (9) The failure to make or serve any notice mentioned in this subchapter.
- (10) The omission of a dollar mark or other designation descriptive of the value of figures upon any document required by this subchapter.
- (11) Any other immaterial informality, omission, or defect on the part of any person in any proceeding or requirement of this subchapter.

§ 105-395. Application and effective date of subchapter. -- (a) Unless otherwise specifically provided herein, all provisions of this Machinery Act (being Subchapter II of Chapter 105 of the General Statutes) shall become effective July 1, 1971, and shall apply to all taxes due and uncollected as of that date as well as to those that shall become due thereafter.

(b) Foreclosure actions commenced under either former § 105-391 or former § 105-414 (as codified in 1965 Replacement Volume 2D of the General Statutes and the 1969 Cumulative Supplement thereto) that have not been completed as of July 1, 1971, shall thereafter be prosecuted in accordance with the provisions of § 105-374 herein. Foreclosure actions commenced under former § 105-392 (as codified in 1965 Replacement Volume 2D of the General Statutes) that have not been completed as of July 1, 1971, shall thereafter be prosecuted in accordance with the provisions of § 105-375 herein.

(c) It is the intent of the General Assembly to make the provisions of this subchapter (being §§ 105-291 through 105-395, inclusive) uniformly applicable throughout the State, and to assure this objective all laws and clauses of laws, including local acts (except local acts relating to the selection of tax collectors), in conflict with the provisions of this subchapter shall, as of July 1, 1971, be and are hereby repealed. As used in this section, the term "local acts" means any acts of the General Assembly that apply to one or more counties by name, to one or more municipalities by name, or to all municipalities within one or more named counties.

Sec. 2. The following sections of the General Statutes of North Carolina are hereby transferred and renumbered as follows:

- (1) G.S. 105-344 is transferred to Article 9 of Chapter 105 and renumbered "§ 105-249.3";
- (2) G.S. 105-404 is transferred to Article 1 of Chapter 105 and renumbered "§ 105-32";
- (3) G.S. 105-407 is transferred to Article 9 of Chapter 105 and renumbered "§ 105-267.1";
- (4) G.S. 105-412 is transferred to Article 7 of Chapter 105 and renumbered "§ 105-207";
- (5) G.S. 105-417.1 is transferred to Article 9 of Chapter 105 and renumbered "§ 105-268.1";
- (6) G.S. 105-417.2 is transferred to Article 9 of Chapter 105 and renumbered "§ 105-268.2"; and
- (7) G.S. 105-417.3 is transferred to Article 9 of Chapter 105 and renumbered "§ 105-268.3."

Sec. 3. The following sections of the General Statutes of North Carolina are hereby repealed:

- (1) G.S. 105-399;
- (2) G.S. 105-400;
- (3) G.S. 105-401;
- (4) G.S. 105-402;
- (5) G.S. 105-403;
- (6) G.S. 105-405.1;
- (7) G.S. 105-406;
- (8) G.S. 105-408;
- (9) G.S. 105-409;
- (10) G.S. 105-410;

- (11) G.S. 105-411;
- (12) G.S. 105-413;
- (13) G.S. 105-414;
- (14) G.S. 105-415;
- (15) G.S. 105-416;
- (16) G.S. 105-417;
- (17) G.S. 105-418;
- (18) G.S. 105-419;
- (19) G.S. 105-420;
- (20) G.S. 105-421;
- (21) G.S. 105-422;
- (22) G.S. 105-423.1;
- (23) G.S. 105-424;
- (24) G.S. 105-425;
- (25) G.S. 105-426;
- (26) G.S. 105-427;
- (27) G.S. 105-428; and
- (28) G.S. 105-429.

Sec. 4. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 5. This Act shall become effective on July 1, 1971.

PART III
EXPLANATORY ANNOTATIONS

The Commission submits the following Explanatory Annotations to accompany its draft of a bill embodying its recodification of the Machinery Act. These annotations are divided into three parts:

1. An index to the proposed Machinery Act.
2. A cross-reference index.
3. Explanatory comments on each section of the proposed recodification.

* * * * *

1. INDEX TO PROPOSED MACHINERY ACT

Chapter 105 of the General Statutes of North Carolina

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§ 105-336	Deleted; superfluous
§ 105-337	Deleted; superfluous
§ 105-338	Deleted; superfluous
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§ 105-345	§ 105-360
§ 105-345.1	Deleted
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§ 105-346	Deleted; obsolete
§ 105-347	Deleted; obsolete
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§ 105-349	Deleted; superfluous
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§ 105-392	§§ 105-375, -376
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§ 105-399	Deleted; superfluous
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§ 105-415	Deleted; superfluous
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§ 105-421	§ 105-390
§ 105-422	§ 105-378
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Article 35. Sheriff's Settlement of Taxes.	
§ 105-424	Deleted; superfluous
Article 35A. Listing of Automobiles in Certain Counties.	
§ 105-425	Deleted; obsolete

§ 105-426

§ 105-427

§ 105-428

§ 105-429

§ 105-314

Deleted; obsolete

Deleted; obsolete

Deleted; obsolete

3. EXPLANATORY COMMENTS

Set out below for each section of the proposed recodification of the Machinery Act is an indication of its source or sources in the present law, together with an explanation of the changes, additions, and deletions proposed.

§ 105-271. Official title.

Source: § 105-271

Comment: No change has been made in this section.

§ 105-272. Purpose of subchapter.

Source: § 105-397.

Comment: The substance of existing § 105-397 has been modified to remove dated provisions. It is placed at this point in the subchapter for purposes of emphasis.

§ 105-273. Definitions.

Sources: §§ 105-272, -372, -401

Comment: The new draft is an extensive revision of existing § 105-272. It omits all definitions and portions of definitions concerned

with state taxes, the Revenue Act, and the Commissioner of Revenue because they are not pertinent to the Machinery Act. It also omits all definitions concerned with the original appraisal and assessment functions of the State Board of Assessment in the belief that they more appropriately fit the article dealing with that subject. See new § 105-333.

The following new definitions are drawn from the numbered paragraphs of the existing statute indicated below:

(5) from (28), omitting the almost obsolete reference to sheriffs.

(6) from (2), noting that a nonprofit corporation is covered by the term "corporation."

(8) from (10), adding a leasehold interest in exempt real property to the list of intangibles; this conforms to Bragg Investment Co. v. Cumberland County, 245 N.C. 492, 96 S.E.2d 341 (1957).

(10) from (29).

(12) from (1), modified to include corporation within the meaning of "person."

(13) from (30).

(14) from (11), expanded to be more useful.

(15) from (32).

(17) from (7).

The following definitions are wholly new to the Machinery Act:

(1), (2), (3), (4), (9), and (18) merely repeat what is made clear in substantive sections of the statute.

(7), (11), and (16) are included to permit the use of a single word rather than repetitive lists in substantive portions of the statute.

§ 105-274. Property subject to taxation.

Sources: §§ 105-281, -396

Comment: Existing § 105-281 antedates adoption of the classification amendment to Article V, § 3, of the North Carolina Constitution and does not take into account the General Assembly's power to select classes of property for taxation. Instead, it was drafted to state the principles of a general property tax rather than a classified property tax. For this reason, the existing section is misleading.

The new draft is designed to enact legislative selection of the classes of property to be taxed. The means adopted is to subject all classes of property to taxation except those specifically excluded. New § 105-275 embodies the definitions of classes that have not been selected for taxation, that is, excluded from the tax base. Thus the substance of the second and third paragraphs of existing § 105-281 has been transferred to new § 105-275.

Subdivision (b) of the new draft is drawn from existing § 105-396. It is placed in this section in order to have all provisions of the act dealing with the same subject in the same place.

§ 105-275. Property classified and excluded from the tax base.

Source: § 105-281

Comment: As noted in the comment on new § 105-274, the General Assembly has the constitutional authority to select the classes that it will tax. Those not selected are excluded from the tax base.

Since the General Assembly has demonstrated a desire to tax most categories of property, it is more economical to describe the categories excluded than to describe those included in the base. New § 105-275 is designed to collect in a single section a description of those classes excluded from the tax base.

Subdivisions (1) and (2) are drawn from the second paragraph of existing § 105-281. They have been set out as two subdivisions for the sake of clarity; no substantive change has been made.

Subdivisions (3) and (4) are drawn from the third paragraph of existing § 105-281. They have been set out as two subdivisions for the sake of clarity; no substantive change has been made.

§ 105-276. Taxation of intangible personal property.

Sources: §§ 105-282, -299, -305, -314, -321, -348

Comment: Existing § 105-282 and the other statutes cited under Sources, above, all provide that the provisions of the Machinery Act are subordinate to the statutes classifying and imposing a tax on selected intangible properties. The new draft is written to achieve the same purpose and to make unnecessary the repetition of the same provision in so many places. The new draft also takes into account the decision in Bragg Investment Co. v. Cumberland County, 245 N.C. 492, 96 S.E.2d 341 (1957), holding that intangibles not classified for taxation by the state remain in the local tax base.

§105-277. Property classified for taxation at reduced rate.

Sources: §§ 105-294.1, -294.2, -294.3, -294.4

Comment: The four sections of the existing law noted under Sources, above, have been placed in new § 105-277 without amendment. This Commission has not considered the problem of classification and exemption in view of the fact that the Tax Study Commission was specifically charged with that subject under 1969 legislation.

§ 105-278. Real property exempt.

Source: § 105-296

Comment: Existing § 105-296 has been inserted as new § 105-278 without amendment. This Commission has not considered the problem of classification and exemption in view of the fact that the Tax Study Commission was specifically charged with that subject under 1969 legislation.

§ 105-279. Timberland owned by State.

Source: § 105-296.1

Comment: Existing § 105-296.1 has been inserted as new § 105-279 without amendment. This Commission has not considered the problem of classification and exemption in view of the fact that the Tax Study Commission was specifically charged with that subject under 1969 legislation.

§ 105-280. Personal property exempt.

Source: § 105-297

Comment: Existing § 105-297 has been inserted as new § 105-280 without amendment. This Commission has not considered the problem of classification and exemption in view of the fact that the Tax Study Commission was specifically charged with that subject under 1969 legislation.

§ 105-281. Deductions and credits.

Source: § 105-298

Comment: Existing § 105-298 has been inserted as new § 105-281 without amendment. This Commission has not considered the problem of classification and exemption in view of the fact that the Tax Study Commission was specifically charged with that subject under 1969 legislation.

§ 105-282. Records of tax exempt property.

Source: § 105-312

Comment: Existing § 105-312 has been inserted as new § 105-282 without amendment. This Commission has not considered the problem of classification and exemption in view of the fact that the Tax Study Commission was specifically charged with that subject under 1969 legislation.

It should be noted that this section does not require a record of property removed from the tax base through legislative exercise of the classification power.

§ 105-283. Uniform appraisal standard.

Sources: § 105-294 and Federal Estate Tax Regulations § 20.2031-1(b)

Comment: Existing § 105-294 encompasses a number of subjects, not all of which relate directly to the main thrust of the section. Thus, the new draft is concerned with a single topic. (The substance of the second and third paragraphs of the existing section has been transferred to new § 105-284; the substance of the fourth paragraph of the existing section has been inserted in new § 105-286; the substance of the fifth and sixth paragraphs of the existing section has been transferred to new § 105-287.)

The first sentence of the new draft is identical with that found in the existing section, and the intention is to leave the appraisal standard unchanged. The remaining portion of the first paragraph of the existing section is verbose and unnecessarily complex. In the Federal Estate Tax Regulations there is a useful definition of "true value," and it has been inserted here without substantive amendment. It does not depart from the meaning of the definition found in existing § 105-294.

§ 105-284. Uniform assessment standard; selection of assessment ratio.

Source: § 105-294.

Comment: Existing § 105-294 deals with both the standard to be applied in appraising property and the selection of an assessment ratio, that is, a percentage of the appraised value to be used for tax purposes. New § 105-283 has been drawn to deal with the appraisal standard; new § 105-284 deals entirely with the selection, adoption, and application of the assessment ratio. Its provisions are drawn from existing § 105-294 without material alteration.

§ 105-285. Date as of which property is to be listed and appraised.

Source: § 105-280

Comment: The new draft separates the provisions concerning real and personal property to avoid any possible confusion. By inserting the words "subject to ad valorem taxation" in subdivision (a), the new draft relieves owners of exempt property from having to list it. The requirement that both real and personal property be listed annually, whether or not subject to appraisal, is spelled out in the first sentence of new subdivision (a). This mandate is drawn from the first paragraph of existing § 105-280. New subdivision (b) and the first paragraph of new subdivision (c) are also found in the existing statute, although in less precise language.

The second paragraph of new subdivision (c) is drawn from the second and third paragraphs of existing § 105-280. The requirement that

the new owner of formerly exempt property be given registered mail notice has been deleted in view of the fact that, as the owner, he has a duty to know the law and to list the property. (See new § 105-348.) His rights of appeal, however, are preserved.

The fourth paragraph of existing § 105-280 deals with one restricted factual situation. As it appears in the existing statute, the provision for liability is inconsistent with all other provisions of the Machinery Act. Thus, it has been redrafted to follow the standard pattern.

§ 105-286. Time for general reappraisal of real property.

Sources: §§ 105-278, -279, -294

Comment: The new draft groups into a single section all provisions concerning the appraisal and reappraisal of real property in octennial and quadrennial years. It also specifies the valuation to be assigned real property in years in which it is not subject to appraisal. (The situations in which real property is to be appraised in non-octennial and non-quadrennial years are treated in new § 105-287.)

Subdivision (a) is drawn from existing § 105-278. A new schedule of octennial appraisals has been inserted to reflect the accelerations that have occurred since 1959.

Subdivision (b) has been drawn from the fourth paragraph of existing § 105-294. The Tax Study Commission that drafted the existing provisions concerning fourth-year appraisals through the use of the plural form of the word "percentage" anticipated that different percentages of

increase or decrease might be applied horizontally to different categories of real property within a county; some question, however, has been raised about the point in recent years. Thus, the new draft attempts to assure that the original intention of the Commission is attained.

Subdivision (c) has been drawn from the second sentence of the opening paragraph of existing § 105-279. The new draft is somewhat more explicit than the existing provision but does not alter its meaning.

§ 105-287. Real property to be appraised in years in which general re-appraisal is not conducted.

Sources: §§ 105-279, -294

Comment: Since new § 105-285 makes provision for the annual listing of both real and personal property and for the annual appraisal of all personal property, and new § 105-286 provides for the appraisal of real property in octennial years, new § 105-287 is confined to the single subject of what real property is to be appraised in non-revaluation years.

Subdivision (a) contains no changes in the present law, but it does make clear that the provision found in existing § 105-279(3)i concerning the non-retroactivity of appraisals made under the section applies to all such changes.

Subdivision (b), except for subdivision (b)(2), is drawn from existing § 105-279. The source of each new subdivision of (b) is indicated below:

(1) is drawn from existing § 105-279(3)a, but for the sake of accuracy uses the word "appraised" rather than the word "assessed."

(2) is drawn from existing § 105-279(3)b, but the material in paragraph (2)(g) has been transferred from the fifth and sixth paragraphs of existing § 105-294.

(3) is drawn from existing § 105-279(3)c.

(4) is drawn from existing § 105-279(3)f, but the word "subdivided" has been replaced by the word "divided" to avoid the implication that subdivision in the formal sense is required for the statute to apply.

(5) is drawn from existing § 105-279(3)g.

(6) is drawn from existing § 105-279(3)d with some slight language changes to make the original intent somewhat plainer, that is, that the circumstances warranting reappraisal under the subdivision must arise from circumstances external to the property.

(7) is drawn from existing § 105-279(3)e but has been modified to reflect changes in the tobacco allotment system that have taken place since the subdivision was originally enacted.

(8) is drawn from existing § 105-279(3)h.

(9) is drawn from existing § 105-279(3)i and, although rewritten, does not change the intent of the existing statute. (The reference to values, standards, and rules adopted at the last preceding revaluation conforms the new draft to new § 105-317.)

Subdivision (c) has been added to make plain the fact that appraisals of real property between octennial years must be made on the basis of the schedules of values, standards, and rules adopted for the last preceding reappraisal. Without this provision the possibility for lack of uniformity would arise.

§ 105-288. Creation; functions; members and officers; oaths.

Sources: §§ 105-273, -274, -275, -362

Comment: The section has been rewritten to encompass the provisions of existing § 105-273 and to add an explicit statement of the three functions presently assigned to the State Board of Assessment. Thus, subdivision (a), after creating the Board, lists the three functions: (1) is drawn from the opening portion of existing § 105-275; (2) is drawn from the opening portion of existing § 105-275 and incorporates the substance of existing § 105-362; (3) is drawn from the opening paragraph of existing § 105-275.

Subdivision (b) has been drafted so that it will speak as of the effective date of the rewritten Machinery Act, that is, July 1, 1971.

Subdivision (c) has been expanded to require that the chairman of the Board be selected from the Board's membership and to provide a specific term for the chairman, matters on which the existing statute is silent.

The oath provision found in subdivision (e) is drawn from existing § 105-274 and has been expanded in the following ways: the requirements of §§ 11-6 (oath to support the Constitution of the United States) and 11-7 (oath to support the Constitution of North Carolina) have been incorporated to insure that they are not overlooked; the particular oath of office has been drafted to parallel that now provided in existing § 105-327(c) for members of county boards of equalization and review the terms of which seem particularly appropriate for any appraisal agency.

§ 105-289. Duties of the Board.

Sources: §§ 105-275, -276(6)

Comment: The substance of the opening paragraph of the existing section has been transferred to new § 105-288(a). The substance of existing subdivision (3) has been transferred to a new and separate section designated as § 105-290.

The several numbered paragraphs of subdivision (a) have been taken from the sources indicated below:

- (1) from existing § 105-275(1)
- (2) combines the substance of existing § 105-275(4) and (5)
- (3) from existing § 105-275(6)
- (4) from existing § 105-275(7)

Subdivision (b) has been added for the sake of completeness but does not expand the existing law.

Subdivision (c) takes the place of existing § 105-275(3) by referring to the new section that makes detailed provision for hearing appeals.

Subdivision (d) is drawn from existing § 105-275(2).

Subdivision (e) is entirely new. It is designed to place an affirmative duty on the Board to instruct local tax officials in their duties. It is made much more specific than the comparable provisions in existing § 105-277.1(2). In addition, it is designed to limit the county commissioners' choice of a tax supervisor to a person certified as qualified by the Board. (An appropriate change has been made in new § 105-294 to reflect the same requirement.) It will be noted that this requirement does not go into effect until July 1, 1973, in order to afford incumbents an opportunity to qualify.

Subdivision (f) has been taken from existing § 105-276(6).

Since it is concerned with a duty rather than a power, it finds a more appropriate place in this statute than in new § 105-290. The sequence of the second and third paragraphs of the existing subdivision have been reversed in the new version for purposes of clarity: the third paragraph is concerned with the use to which the information is put by local authorities (thus properly follows immediately after the provisions concerning the means by which local authorities may obtain information), while the second paragraph is concerned with the Board's authority to make the data available. The portion of existing § 105-276(6) inserted by way of a proviso has been eliminated in favor of an opening phrase authorizing the Board to establish regulations under which information will be furnished local authorities; this seems substantially better than having the statute attempt to spell out this administrative detail.

Subdivisions (g), (h), (i), and (j) are assigned by existing § 105-277.1 to the administrative officer of the State Board of Assessment. Since these are affirmative responsibilities, and since the administrative officer functions under the Board's supervision, it seems more appropriate to place the duties on the Board and let it assign them as it sees fit. Subdivision (i) is modified to require that ratio studies be made on a continuing basis (rather than in revaluation years only) and to require biennial publication of the results of the studies. The existing statute specifies no publication schedule.

§ 105-290. Appeals to the State Board of Assessment.

Sources: §§ 105-275(3), -276(2), (3), and (4)

Comment: The new draft attempts to gather in one section all of the existing provisions concerning appeals to the State Board of Assessment regarding listings and valuations and to add a new procedure for having the Board hear appeals from boards of county commissioners upon the adoption of schedules of value in revaluation years under new § 105-317(b). It also clarifies the manner in which the Board is empowered to use a deputy to hold hearings and make investigations, and it redefines the Board's subpoena power in cases of appeal.

Subdivision (a) makes it plain that all appeals from county boards are to be governed by the provisions of this section.

Subdivision (b) is designed to deal with those appeals in which the listing of property (i.e., problems of situs and exemption) or the appraisal of property are at issue. It does not cover appeals from the adoption of schedules of value in revaluation years, a matter treated in subdivision (c). In subdivision (b)(1), the provisions of existing § 105-275(3) and § 105-329 concerning the subject matter of appeals are broadened to cover personal property -- an obvious oversight in the existing statutes.

Subdivision (b)(2) introduces a new element in the statute: it requires the Board to elect whether it will hear the appeal as a full Board or delegate a member, members, or deputy to hear it. This use of a deputy or representative is not entirely novel; existing § 105-276(4) seems to contemplate the procedure but does

not spell it out with clarity. It should be noted that in the event the Board elects to have the hearing made by a representative, the representative makes recommended findings and conclusions that are subject to Board review, and the Board is permitted three options as to the treatment it will accord its representative's recommendations, etc.

Subdivision (b)(2)b spells out the procedure to be followed when the full Board elects to hear an appeal.

Subdivision (b)(3) introduces little that is actually new but makes detailed provision for the way in which Board decisions are to be embodied and distributed.

Subdivision (c) is entirely new material. It is calculated to afford property owners a right to appeal from a decision of a board of county commissioners adopting schedules of value to be used in real property revaluations under new § 105-317, but it is also designed to insure that such appeals are disposed of before appraisals are made under the schedules. The recent experience in Nash County demonstrates the need for such a procedure. It is desirable that an appeal be allowed, but it is undesirable (both for the property owners and the county authorities) for such an appeal to be delayed until after the schedules have been put into effect. The new section offers protection for both.

Subdivision (d), concerning the subpoena power of the Board, is drawn from existing § 105-276(3). The provision for enforcing the subpoena by attachment has been deleted because it does not conform with the rules of civil procedure in force in this state. The criminal penalty seems to be adequate for enforcement purposes and seems to be more appropriate than punishment for contempt.

§ 105-291. Powers of the Board.

Sources: §§ 105-276, -275(1)

Comment: The section has been rearranged for purposes of clarity, and the provisions of existing § 105-276(6), which are more in the nature of a duty than a power, have been transferred to new § 105-289. Those portions of existing § 105-276(2), (3), and (4) that deal with powers of the Board in hearing appeals have been transferred to new § 105-290.

Subdivision (a) is drawn from existing § 105-276(7).

Subdivision (b) combines provisions found in existing § 105-276(1) and in existing § 105-275(1).

Subdivision (c) is drawn from existing § 105-276(2) and from the first sentence and the second paragraph of existing § 105-276(3). The new statute has been drafted to spell out the general investigatory power implicit in the existing statute but which may not be readily apparent.

Subdivision (d) is taken from existing § 105-276(5).

Subdivision (e) is taken from existing § 105-276(1).

Subdivision (f) is taken from existing § 105-276(1).

Subdivision (g) is entirely new. It has been inserted to provide for situations in which a given category of property commonly found in a number of counties may be appraised uniformly throughout the state.

§ 105-292. Sessions of the Board.

Source: § 105-277

Comment: The new version of this section requires the Board to hold quarterly meetings each year and permits other sessions to be held at the call of the chairman. This differs from existing § 105-277 in that the existing law does not specify the number of meetings to be held but provides instead that the Board (rather than the chairman) determines the time and place of meetings outside Raleigh.

§ 105-293. Duties of administrative officer.

Source: § 105-277.1

Comment: Prior to enactment of Chapter 1196, Session Laws of 1967, the responsibilities listed in subdivisions (1) and (2) of existing § 105-277.1 were carried as "Powers of the Board" in § 105-277 as then drafted. Without critical review these responsibilities were assigned to the administrative officer when that position was created. New § 105-293 assigns those and all other specific duties to the Board itself and leaves the Board free to assign whatever responsibilities it chooses to the administrative officer. The new draft makes it plain that the administrative officer is to serve as the Board prescribes.

§ 105-294. County tax supervisor.

Sources: §§ 105-283, -284

Comment: The new draft combines existing §§ 105-283 and 105-284, and it makes the substantive changes noted below.

Subdivision (a), starting in 1973, extends the tax supervisor's statutory term from two to six years. Tax supervisors in office when the revision is enacted will hold office until that date. The removal authority of the county commissioners has not been altered, but the tax supervisor's right to notice and hearing before removal is made explicit.

Subdivision (b) deletes the requirement of existing § 105-283 that any person named tax supervisor must have been a resident of the county for a year before appointment -- a qualification that has given some difficulty in the past. Effective July 1, 1973, the person named county tax supervisor must be certified as qualified by the State Board of Assessment. This requirement ties in with a related provision in new § 105-289(e).

Subdivision (c) is carried forward from existing § 105-283 without change.

Subdivision (d) is drawn from the last paragraph of existing § 105-283 with two changes made: (1) the authority to name a full-time chairman of a board of county commissioners as tax supervisor has been deleted (to conform with the Attorney General's view that this would be improper) and (2) a requirement that after July 1, 1973, an appointee must be certified as qualified by the State Board of Assessment has been inserted. This second change conforms to that made in subdivision (b), above.

§ 105-295. Oath of office for tax supervisor.

Sources: §§ 105-285, -327, 11-6, -7

Comment: The new draft presents an oath parallel to that required of members of the board of equalization and review by existing § 105-327 because it is a particularly fitting one for any official charged with the appraisal of property for taxation. References to the oaths required by §§ 11-6 and 11-7 have been inserted to ensure that the requirements of those sections are not overlooked.

§ 105-296. Powers and duties of tax supervisor.

Sources: §§ 105-286, -287, -288, -290, -292, -322

Comment: The new draft retains all the powers and duties assigned the tax supervisor by existing § 105-286, transfers to this section other powers and duties assigned this officer under other existing sections, and gives the tax supervisor additional powers and duties noted below.

Subdivision (a) combines subdivisions (a) and (h) of existing § 105-286.

Subdivision (b) places the appointment as well as the power to determine the number of list takers and assistants within the authority of the tax supervisor, thereby making it unnecessary to name them for each township unless it is desirable to do so. This change makes it possible to eliminate existing §§ 105-287, 105-288, and 105-290 because list takers, if appointed, will obtain their authority through delegation from the tax supervisor.

Subdivision (c) inserts a requirement of newspaper advertisement of the times and places for listing and assigns the duty to advertise to the tax supervisor rather than to a list taker. This change is in line with subdivision (b), above.

Subdivision (d) is drawn from existing § 105-286(c).

Subdivision (e) is drawn from existing § 105-286(d), to which has been added the provision of existing § 105-290(c) that authorizes the tax supervisor to require list takers to visit persons and property subject to taxation.

Subdivision (f) combines existing §§ 105-288 and 105-322. The provisions of existing § 105-322 have been placed in this section because they deal directly with the authority of the tax supervisor.

Subdivision (g) is drawn from existing § 105-286(e), to which has been added a provision for the enforcement of the power to subpoena and a penalty for failure to honor a subpoena. This provision parallels the one found in new § 105-291(c).

Subdivision (h) is drawn from existing § 105-286(f). Portions of that section inserted for the purpose of an investigation made in 1957 have been deleted because they no longer serve any purpose.

Subdivision (i) is drawn from existing § 105-286(g).

§ 105-297. Assistant tax supervisors.

Source: § 105-292.

Comment: The provisions in existing § 105-292 concerning clerical assistants have been transferred to new § 105-296 (which contains the powers of the tax supervisor) because clerical assistants are different from and irrelevant to assistant tax supervisors. Otherwise, the section remains unchanged, except that the portion making it inapplicable to fifteen counties has been deleted because the authority remains discretionary and statutory exclusion is superfluous.

§ 105-298. Oath of office for list takers and assessors.

Sources: §§ 105-289, -327, 11-6, -7

Comment: This section will be needed if a county decides to use list takers under new § 105-296(b). The form of the oath has been revised to parallel that provided for members of the board of equalization and review in existing § 105-327 because that oath is appropriate for any officer charged with appraising property for taxation. A reference to the provisions of §§ 11-6 and 11-7 has been inserted to ensure that they are not overlooked.

§ 105-299. Employment of experts; registration.

Sources: §§ 105-291, -277.1(4)

Comment: New § 105-299 has been divided into two subdivisions. Subdivision (a) is drawn from existing § 105-291 with the following modifications: It is made plain that firms as well as individual experts may be employed; the list of types of property for which expert advice may be sought has been deleted as obsolete; the provision concerning compensation has been broadened to negate any idea that a contract for appraisal advice is comparable to a construction contract requiring advertisement and bids. This is in line with the consistent view of the Attorney General and other legal authorities.

It will be noted that the questionable requirement that the employment of experts be dependent upon the tax supervisor's request has been deleted.

Subdivision (b) is drawn from existing § 105-277.1(4) and is placed in this section for the sake of giving in one place a complete set of instructions on the subject of experts. (An appropriate reference has been inserted in new § 105-293.) The only new element introduced is item (2), and it has been added to meet one of the practical problems counties have faced in attempting to evaluate the capacity of appraisal firms.

§ 105-300. Tax commission.

Source: § 105-293

Comment: This section is drawn from existing § 105-293 with a single change made: A tax commission is specifically clothed with the powers and duties of the county board of equalization and review. This is not actually a change in substance, for the existing section gives the commission all the responsibilities of the board of county commissioners, which, under the general law, include serving as the board of equalization and review.

§ 105-301. Place for listing real property.

Source: § 105-300

Comment The new draft is drawn from existing § 105-300 and makes no change in its substance. A reference to the mechanics of listing required by new § 105-309 is inserted for completeness, and a reminder that municipalities may require separate listing under new §§ 105-326 through 105-328 is also added.

§ 105-302. In whose name real property is to be listed.

Source: § 105-301

Comment: Existing § 105-301 attempts to encompass two separate subjects -- (1) that noted in the title of the section and (2) the powers of the board of county commissioners to provide for permanent listing

and other listing procedures. New § 105-303 covers the second of these subjects; this section (§ 105-302) deals with the single subject noted in the title.

Subdivision (a): The first sentence is taken from the first sentence of subdivision (a) of existing § 105-301, modified to reflect the possibility of relieving the owner of a duty to list if the county adopts a permanent listing system. The word "taxable" has been inserted at the opening of the sentence to insure that exempt real property does not have to be listed. The second sentence is taken from the last paragraph of subdivision (a) of existing § 105-301.

Subdivision (b) is drawn from the proviso at the end of subdivision (j) of existing § 105-301. It is drafted as a separate subdivision because the substance applies to the entire section and needs emphasis.

Subdivision (c): This subdivision is taken from subdivisions (b) through (j) of existing § 105-301 except as indicated below:

(1) from (b)

(2) from (g)

(3) from (f)

(4) from (f)

(5) is a new provision inserted to take care of a difficult problem tax collectors face in determining true ownership of a sole proprietorship whose property is listed in the firm's name.

(6) from (c)

(7) from (d)

(8) from (i). The portion of existing § 105-301(i) dealing with the lien against real property subject to a life estate has been transferred to new § 105-355 (a statute that deals with the creation of tax liens against real property).

(9) from (e)

(10), dealing with real property held by husband and wife by the entireties, has been inserted to reflect decisions of the North Carolina Supreme Court in Edwards v. Arnold, 250 N.C. 500, 109 S.E.2d 205 (1959), and Duplin County v. Jones, 267 N.C. 68, 147 S.E.2d 603 (1966). See comment on new § 105-309.

(11) from (h). The portion of existing § 105-301(h) dealing with the lien against land on which improvements or in which rights are held by one other than the owner of the land has been transferred to new § 105-355.

(12) from (j), with the addition of a provision dealing with the listing of real property the title to which is in dispute. The proviso at the end of existing § 105-301(j) has been transferred to subdivision (b), above.

§ 105-303. Obtaining information on real property transfers; permanent listing.

Source: § 105-301

Comment: New § 105-303 is taken from the first, second, and third paragraphs of existing § 105-301(a).

Subdivision (a) is taken from the first and second paragraphs of existing § 105-301(a). The subdivision makes clear that only one of the two procedures provided may be employed and that the decision as to which, if either, is left to the board of county commissioners. The provision found in existing § 105-301(a) that sets a limit on the fee to be allowed the register of deeds for supplying information under one of the procedures is too restrictive and has been deleted.

Subdivision (b) is drawn from the third paragraph of existing § 105-301(a) as follows:

(b)(1) from the first sentence.

(b)(2) from the first sentence. (Although the owner is relieved of the duty of listing real property when a permanent system is adopted, the new draft, through a reference to new § 105-309(d)(3) through (d)(5), makes it clear that the owner is not relieved of the duty of reporting new improvements and other facts that may not be discovered through examination of the land records on file at the courthouse.)

(b)(3), when permanent listing is installed, relieves the property owner of any penalty for not listing except the penalty for not reporting the facts he is required to report under (b)(2), above.

(b)(4) is taken from the second sentence.

§ 105-304. Place for listing tangible personal property.

Source: § 105-302

Comment: Existing § 105-302 has been the subject of more difficulty in administration than any other single section of the Machinery Act. This is accounted for by the fact that the very movability of personal property makes it difficult to locate for taxation and by the fact that the existing section is not easy to interpret. The purpose of the revision is to make the statement of the law easier to understand, not to alter the fundamental thrust of the existing section.

The first change has been to make specific the fact that the section is concerned only with personal property that has a tax situs in North

Carolina; it is not intended to deal with the determination of whether the property is taxable in this state. It is concerned with the place within this state at which property taxable in this State is to be taxed. The basic policy is that tangible personal property is taxable at the residence of the owner if he has a residence in this state; if he has no residence in this state, his tangible personal property is taxable where it is situated. If he has a residence in the state but owns personal property elsewhere in the state which is situated at or commonly used in connection with a temporary or seasonal dwelling or a business premises, it is taxable where situated or used.

Subdivision (a) states the coverage of the section and makes it clear that tangible personal property is to be listed for taxation in the place at which the statute makes it taxable (this includes cities and towns as well as counties). The awkward reference to "township" has been deleted.

Subdivision (b) defines terms used in the section, thereby avoiding the necessity of interrupting the flow of the statute to insert explanations of terms. The definition of "situated" is adopted from a judicial interpretation of existing § 105-302 made in In re Freight Carriers, 263 N.C. 345, 139 S.E. 2d 633 (1965). The definition of "business premises" is inserted to cover the locations listed in subdivisions (a) and (d) of existing § 105-302. The definition, unlike the existing statute, makes the term include similar locations not specifically listed.

Subdivision (c) states the basic rule of taxation at the owner's residence and defines residence in two instances -- (1) for the individual with more than one home in the state and (2) for the business firm. It is taken from existing § 105-302(a).

Subdivision (d) covers the taxability of tangible personalty belonging to nonresidents. It is drawn from subdivisions (a) and (c) of existing § 105-302.

Subdivision (e) is drawn from existing § 105-302(b).

Subdivision (f)(1) is drawn from existing § 105-302(a). The specific reference to "household and kitchen furniture" has been dropped and the word "kept" has been changed to "situated."

Subdivision (f)(2) is drawn from existing § 105-302(d). In the new draft the requirements of "situation" and "use in connection with" are alternative rather than conjunctive. Furthermore, the emphasis has been shifted to require the use of the personal property in connection with the business premises rather than visa versa.

Subdivision (f)(3) has been added to provide simple guides for the tax officials in listing personal property under this section.

Subdivision (g) is drawn from existing § 105-302(e).

Subdivision (h) is drawn from subdivisions (f) and (g) of existing § 105-302.

§ 105-305. Place for listing intangible personal property.

Sources: §§ 105-303, -302

Comment: Existing § 105-303 is inadequate in that it does not state positively the result required by Bragg Investment Company v. Cumberland County, 245 N.C. 492, 96 S.E.2d 341 (1957). New § 105-305 states the affirmative requirement of the law with regard to the local taxability of intangibles not classified for taxation under the state intangibles tax.

The new draft is drawn to parallel the provisions of new § 105-304 (dealing with the listing of tangible personal property) insofar as the situs of intangibles can be assigned to this state, except for the

concept of assigning intangibles to a business premises other than the residence of the owner.

Leasehold interests and other intangible interests in real property in this state, under subdivision (c), are to be taxed where the real property is located rather than at the residence of the owner of the intangible. This exception is supported by business custom and the recordation system.

§ 105-306. In whose name personal property is to be listed.

Source: § 105-304

Comment: This section is drawn to cover both tangible and intangible personal property, as is the case with the existing section from which it is taken, § 105-304. The word "taxable" has been inserted at the opening of subdivision (a) to indicate that exempt personalty does not have to be listed for taxation.

Subdivision (a) is taken from the first sentence of existing § 105-304(a)

Subdivision (b) is new; it fills an obvious gap in the present statute and parallels subdivision (b) of new § 105-302.

Subdivision (c) is derived as follows:

(c)(1) from the second sentence of existing § 105-304(a).

(c)(2) from the second sentence of existing § 105-304(a).

(c)(3) from existing § 105-304(b).

(c)(4) is new; it is inserted to assist tax collectors in determining the true owner of personal property owned by a sole proprietorship trading under a firm name.

(c)(5) from existing § 105-304(c).

(c)(6) from existing § 105-304(d).

(c)(7) from existing § 105-304(e), with the addition of a provision concerning personal property owned jointly by individuals who own land by the entireties. The addition has been made to preserve the lien for taxes on jointly owned personalty against such real property.

(c)(8) from existing § 105-304(f) but broadened to cover situations in which the ownership of personal property is unknown and in which no one appears to be in possession.

§ 105-307. Length of listing period, preliminary work.

Source: § 105-311

Comment: The new draft is not intended to alter the sense of existing § 105-311, but several matters have been clarified. The action of a board of county commissioners extending a listing period must be recorded in the minutes of the board. To avoid misinterpreting new § 105-312 (dealing with penalties for not listing on time), the regular listing period is defined.

§ 105-308. Duty to list; penalty for failure.

Source: § 105-307

Comment: The new draft divides the section into paragraphs and makes a slight change in the sequence of the provisions. The only substantive change is to increase the possible criminal penalties for failure to list, for concealment of property, and for aiding and abetting in the concealment of property from a fine of \$50 or imprisonment for 30 days to a fine of \$500 or imprisonment for six months. The intention is to make the possible penalties substantially greater than at present but still below the dollar amount and length of imprisonment that would require the appointment of counsel for indigents.

§ 105-309. What the abstract shall contain.

Source: § 105-306

Comment: Existing § 105-306 contains two mandates: (1) that the person whose duty it is to list property must file his listing with the proper list taker and assessor, and (2) that the tax list or abstract must show the information listed in twenty-six subdivisions of the existing section. This second mandate implies that the abstract form must be designed to accommodate the required information.

The requirement that the list be filed with "the proper list taker and assessor" is modified by existing § 105-307 which permits the list to be filed with the tax supervisor as well as the list taker and assessor. For this reason, for the reason that listing by mail

has become increasingly popular in the state, and because the use of list takers is made optional by new § 105-296, new § 105-309 authorizes listing with either the tax supervisor or the proper list taker and assessor.

In the cases of Edwards v. Arnold, 250 N.C. 500, 109 S.E. 2d 205 (1959), and Duplin County v. Jones, 267 N.C. 68, 147 S.E.2d 603 (1966), the North Carolina Supreme Court made it clear that, with regard to real property owned by the entirety, the "taxpayer" within the meaning of the listing and lien provisions of the Machinery Act is neither the husband nor the wife but "that third person recognized by the law, the husband and the wife." [Bruce v. Nicholson, 109 N.C. 202, 13 S.E. 790 (1891).] To assure that this interpretation of the law is spelled out so as to facilitate preservation of the tax lien against real property so held, new subdivision (a)(1) requires that real property held by the entirety and jointly owned personal property of the husband and wife be listed on a single abstract.

Existing § 105-301(e) and new § 105-302(c)(9) permit tenants in common (with the tax supervisor's approval) to list their interests separately. The implication is that in the absence of such approval they should list their interests on a single abstract. This requirement has been made explicit in subdivision (a)(2).

Subdivision (b) expands the provisions of existing § 105-306(1) to require that the abstract show names and addresses needed in the tax collection process as well as in the checking of listings. Unincorporated firms trading under names that do not identify the owning individuals often present serious problems for the tax collector. The new subdivision is designed to reduce these problems.

Subdivision (c) is drawn from existing § 105-306(2) and substitutes the word "county" for the word "township."

Subdivisions (d)(1) and (2) are drawn from existing § 105-306(3), (4), and (5). The substance of those subdivisions has been retained, consolidated, and simplified, but their intention has not been altered. The use of "manufacturing" property as a category in existing § 105-306(4) has been eliminated because it is adequately covered by the remaining provisions. The widespread use of tax maps has been recognized.

Subdivision (d)(3) is drawn from the first sentence of existing § 105-306(6).

Subdivision (d)(4) is drawn from existing § 105-306(9).

Subdivision (d)(5) is drawn from the second sentence of existing § 105-306(6) and from existing § 105-306(7); a reference to new § 105-302(c)(11) has been inserted to show the relationship between the two sections.

Subdivision (e) replaces subdivisions (8) and (10) through (23) of existing § 105-306. The new draft requires that the abstract show the township and municipality, if any, in which listed personal property is taxable. Instead of attempting to place a detailed inventory of the kinds of personal property that must be provided for on the abstract, the new draft leaves the State Board of Assessment free to prescribe appropriate items. This merely makes explicit a power granted the Board in new § 105-318. Under the new draft the Board will be able to permit different units to provide for listing different kinds of personal property on their abstracts; thus, for example, seines and nets need not be required on the abstract of a county having no fishing operations.

Subdivision (e)(1) is drawn from existing § 105-306(25), and subdivision (e)(2) is taken from existing § 105-306(24).

Subdivision (f) is drawn from existing § 105-306(26).

§ 105-310. Affirmation; penalty for false affirmation.

Sources: §§ 105-308, -155

Comment: The existing statute's requirement that the list taker and assessor actually administer the oath required on the abstract has been the cause of much dissatisfaction and is generally ignored. Furthermore, existing § 105-308 cannot be applied in counties that accept listings by mail as a common practice. New § 105-310 provides for an affirmation that may be signed without the administration of an oath. This affirmation has been patterned after that used for the North Carolina State Income Tax. (See § 105-155.) To avoid having the penalty for a false affirmation fall within the perjury law (making the offense a felony), the new draft contains a specific criminal penalty -- a misdemeanor, the punishment for which is limited so as to avoid the necessity of appointing counsel for indigents.

§ 105-311. Duty to appear for purposes of listing and signing affirmation; use of agents and mail.

Sources: §§ 105-309, -310

Comment: New § 105-311 is designed to effect three primary purposes: (1) to require that persons whose duty it is to list appear in person for purposes of listing, (2) to clarify the law as to what taxpayers may have their abstracts submitted by officers or agents, and (3) to allow any county desiring to do so to adopt a system by which abstracts may be submitted by mail as a general practice.

Existing § 105-309 allows any female, any business firm, any nonresident, and any physically disabled person to "have their lists submitted and sworn to by an officer or agent." Thus, not only may such taxpayers have their lists prepared and delivered by an agent but also the agent may take responsibility for the listing by subscribing the required oath.

The new draft is designed to restrict the right of an agent to sign an abstract to those situations in which the taxpayer is mentally or physically incapable of doing so. Subdivision (a)(1), which embodies this concept, is drawn to parallel a comparable provision in the North Carolina State Income Tax law, § 105-152(b).

A business firm is required by subdivision (a)(2) to have the affirmation on its abstract signed by a principal officer of the firm rather than by an agent. This restriction is intended to insure that a person over whom the firm has control attests its listing; it eliminates the possibility of having a firm's listing prepared and signed by an independent "tax representative."

Under subdivision (a)(3) a nonresident of the county (rather than the township) is authorized to have his listing prepared by an agent, but, for the reason suggested with regard to business firms, he must sign the required affirmation himself.

The blanket authorization for women to have their lists submitted and sworn to by agents has been removed because it is incompatible with modern attitudes toward females. No other North Carolina tax statute gives women special consideration.

Subdivision (b) is designed to effect the third primary purpose of the new draft noted above.

§ 105-312. Discovered property; appraisal; penalty.

Source: § 105-331

Comment: Extensive revision of existing § 105-331 has been undertaken because of the difficulty of understanding and applying the present statute. The revision attempts to restate the existing law in an orderly fashion in the light of its purpose (to insure that unlisted and underlisted property is properly listed and to penalize for the failure to list and for underlisting).

What constitutes a "discovery" under the existing law has long been interpreted by the Attorney General as the finding of an unlisted item of property. This view has made it impossible to discover, list for prior years, and penalize in a case of understatement of the value, number, amount, etc. of a listed item. The State Board of Assessment and the tax supervisors feel that such an understatement, when detected, should be treated as a discovery. The new draft attempts to define "discovery" to include substantial understatements or "underlistings."

Subdivision (a) inserts definitions that are new to the statute but which are necessary to make the new draft apply to understatements. The definition of "substantial understatement" is supplied to give administrators a standard of measurement.

Subdivision (b) is taken from the first sentence of the first paragraph of existing § 105-331(a) and is broad enough to make unnecessary the provisions of existing § 105-331(f).

Subdivision (c) is taken from the first sentence of the second paragraph of existing § 105-331(a). The new draft makes clear that

real property carried forward is to be treated as any other discovered property unless it (1) is listed in the name of the taxpayer who listed it for the preceding year and (2) is not subject to appraisal under new § 105-286 or § 105-287.

Subdivision (d) is taken from existing § 105-331(b). A duty to make a tentative appraisal at the time of discovery is inserted to make explicit what is implicit in the existing statute.

Subdivision (e) is taken from existing § 105-331(b). An option is inserted to allow the correction of the original abstract rather than the making of a new one.

Subdivision (f) is taken from the first and second paragraphs of existing § 105-331(c). The presumptions are not changed. It is made plain that the key date is the date of discovery; when it is ascertained that property was not listed in any one or more of the five years preceding the date of discovery, the presumption applies to all other years during that five-year period.

Subdivision (g) is taken from the third and fourth paragraphs of existing § 105-331(c). For clarity, the presumptions, the tax computation, and the penalty provisions have been set up in separate subdivisions.

Subdivision (h) is taken from the fourth paragraph of existing § 105-331(c). The provisions have been completely re-drafted in the interests of clarity.

Subdivision (i) is taken from the fifth paragraph of existing § 105-331(c).

Subdivision (j) is taken from existing § 105-331(g).

Subdivision (k) is taken from existing § 105-331(c) revised to make clear (as the Attorney General has ruled) that power to compromise does not arise until the tax and penalty on discovered property has been computed and charged to the collector.

Subdivision (l) is taken from existing § 105-331(e).

The substance of existing § 105-331(h) has been transferred to new § 105-324. Existing § 105-331(i) has been deleted as superfluous and possibly misleading.

§ 105-313. Report of personal property by multi-county businesses.

Source: § 105-302.1

Comment: Existing § 105-302.1 has not been as effective in operation as was anticipated when it was enacted. It was designed to put in the hands of an individual tax supervisor means of checking on the listing of a multi-county business firm in his county as compared with listings by that taxpayer throughout the state -- a necessity in using state tax returns as a source of information. At the same time, the existing statute could result in an undue reporting burden on a taxpayer. Thus, the section has been recast to retain the right of the individual tax supervisor to require the report, but it has been amended to allow the administrative officer of the State Board of Assessment to make the request also. Regardless of who requests the report, new § 105-313 requires the taxpayer to file the report with the State Board of Assessment rather than with

individual tax supervisors. Having the report on file with the State Board makes it available to all interested counties without the taxpayer's having to make separate reports to each.

§ 105-314. Information concerning tax situs of motor vehicles.

Source: § 105-315

Comment: The title of this section has been broadened, and the text has been divided into two subdivisions for the sake of emphasis. No substantive change has been made.

§ 105-315. Reports by persons having custody of tangible personal property of others.

Sources: §§ 105-316, -317

Comment: The new draft is designed to incorporate the provisions of existing §§ 105-316 and 105-317 (with the exception of the portions of § 105-317 that deal with house trailer park operators) and to expand the mandate of the section to include any person having custody of the tangible personal property of another for business purposes. The tax supervisor's need for this kind of report is not restricted to those that might be received from warehousemen, consignees, and brokers.

Subdivision (a), modified as noted above, is drawn from existing § 105-316(a) and from the first sentence and proviso of existing § 105-317. The last sentence of existing § 105-316(a) and the last sentence of § 105-317 are made superfluous by use of the word "taxable" in the opening sentence of the new draft.

Subdivision (b) is drawn from existing § 105-316(b) and from the second sentence of existing § 105-317, modified to remove the requirement of a request from a tax supervisor as a prerequisite to imposition of the penalty for failure to make the reports required by subdivision (a), above. The new draft has been written to reflect recent changes in the court system, and it makes plain that when the penalty has been recovered the taxes are to be deemed paid.

In the light of the opinion in Davenport v. Ralph N. Peters & Co., 386 F.2d. 199, 208 (1967), the words "having custody" are used in place of the words "in possession" found in the existing sections.

§ 105-316. Reports by house trailer park, marina, and aircraft storage facility operators.

Source: § 105-317

Comment: The portions of existing § 105-317 dealing with trailer park operators have been transferred to subdivisions (a)(1) and (b) of this separate new section because the custody concept used in new § 105-315 is not applicable to the kind of property whose presence is to be reported under this section.

The new section has been expanded to cover boats and airplanes for which a marina or other storage place rents space. This is in line with current needs expressed by local tax officials.

§ 105-347. Appraisal of real property; land and buildings.

Source: § 105-295

Comment: Subdivisions (a) and (b) of the new draft are drawn from and represent little departure from existing § 105-295. The principal change in subdivision (b) has been to spell out the tax supervisor's responsibility to include the development of "standards" and "rules" as well as "schedules of values" for use in revaluation programs. This is actually not an expansion but a clarification of what seems to have been the intention of the statute when first adopted. Schedules of values are not complete without the concurrent adoption of rules and standards for their use. The words "and appraised" have been inserted after the words "visited" and "observed" in subdivision (b)(2) to complete what seems to have been the clear objective of the original statute. The slight insertions in subdivision (a) are self-explanatory.

Subdivision (c), other than the first sentence, is entirely new. The recent experience in Nash County demonstrated the need for a clear-cut right to appeal the adoption of schedules of values, etc. prior to their employment. That experience showed that such appeals should be disposed of with finality before appraisals are undertaken. Subdivision (c) is designed to provide such a procedure. At the State Board level the same subject is treated in new § 105-290(c).

§ 105-318. Forms for listing, appraising, and assessing property.

Source: § 105-313

Comment: The first two sentences of the new draft are drawn directly from existing § 105-313 without modification. The last sentence has been inserted for the sake of completeness but is not new law; its substance is drawn from existing §§ 105-313, -323, -324, -333.

§ 105-319. Tax records; preparation of scroll and tax book.

Sources: §§ 105-323, -333

Comment: Existing § 105-323 is drawn as if it applied to counties only, but, as provided in existing § 105-333, the section is equally applicable to cities and towns. To avoid having this application overlooked, new § 105-319 is written to make plain the fact that municipalities come under its provisions.

Existing § 105-323 defines the term "tax records" indirectly; the new draft makes the definition specific. See subdivision (a).

Subdivision (b) embodies and simplifies the provisions of existing subdivision (b) and the last sentence of existing subdivision (a).

Subdivision (c) embodies the provisions of existing § 105-323(c) and its ten numbered paragraphs: each numbered paragraph of the new draft is taken from the comparably numbered paragraph of the existing subdivision except that new (10) has been added to supply an obvious omission in the existing law. A few minor changes in language have been made, but none alters the substance of the existing statute.

Subdivision (d) is drawn from existing § 105-323(d). A few minor changes have been made but nothing alters the existing law. Municipal corporations are covered by a reference to new §§ 105-326 through 105-328.

§ 105-320. Tax receipts; preparation.

Sources: §§ 105-324, -333

Comment: Existing § 105-324 is drawn as if it applied to counties only, but, as provided in existing § 105-333, the section is equally applicable to cities and towns. To avoid having this application overlooked, new § 105-320 is written to make plain the fact that municipalities come under its provisions.

The references to "stubs" have been deleted throughout the new draft. These deletions do not, however, invalidate the use of receipts with stubs rather than duplicates, for the new draft allows the State Board of Assessment to authorize the use of stubs if it desires to do so.

The opening portion of subdivision (a) is drawn from the second sentence of the opening paragraph of existing § 105-324. The numbered paragraphs of subdivision (a) of the new draft are taken from the numbered paragraphs of the existing statute indicated below:

(1) from (1), with the addition of a requirement that the taxpayer's mailing address be shown on the tax receipt.

(2) from (2)

(3) from (3)

(4) from (4)

(5) from (5)

(6) from (6)

(7) from (7)

(8) from (10); the sequence has been changed for purposes of clarity.

(9) from (8)

(10) from (9)

(11) is new; it is designed to make clear that penalties for failure to list are different from interest for failure to pay taxes on time. See (14), below.

(12) from (11), with the addition of penalties for failure to list.

(13) from (12)

(14) from (13), modified to read "interest" rather than "penalties" to draw attention to the difference between the two. See (11), above.

Subdivision (b) is drawn from the first sentence of the opening paragraph of existing § 105-324.

§ 105-321. Disposition of tax records and receipts; order of collection.

Sources: §§ 105-325, -333

Comment: Existing § 105-325 is drawn as if it applied to counties only, but, as provided in existing § 105-333, the section is equally applicable to cities and towns. To avoid having this application overlooked, new § 105-321 is written to make plain the fact that municipalities come under its provisions.

The sequence in which the provisions of the new draft are arranged has been altered from that found in existing § 105-325 to follow the actual chronology of events.

Subdivision (a) follows the intention of the first and last sentences of the first paragraph of existing § 105-325.

Subdivision (b) is taken from the second paragraph of existing § 105-325. Except for minor language changes, this form of the collection order and the statement of its legal effect have been left intact.

Subdivision (c) is taken from the second sentence of the first paragraph of existing § 105-325. It has been amended to reflect the common use of duplicate tax receipts.

Subdivision (d) is taken from the first sentence of the second paragraph of existing § 105-325.

§ 105-322. County board of equalization and review.

Source: § 105-327

Comment: The new section is substantially equivalent to existing § 105-327, but it has been redrafted to make a clear distinction between those actions the board takes on its own motion and those it takes pursuant to taxpayers' appeals. The new draft also defines the board's jurisdiction in such a way as to exclude (and not to conflict with) the provisions for appeal from the adoption of rules and schedules in revaluation years under new § 105-319(c).

Subdivision (a) is drawn from existing subdivision (a).

Subdivision (b) is drawn to eliminate the confusion arising from existing subdivision (b) and to conform to § 153-13.

Subdivision (c) is drawn from existing subdivision (c).

Subdivision (d) is drawn from existing subdivision (d), to which has been added a requirement that minutes be kept of board actions.

Subdivision (e) is drawn from existing subdivision (e), with the addition of a provision for meetings of the board following its initial meeting. This change is made in response to problems that have arisen from the silence of the existing statute.

Subdivision (f) is drawn from existing subdivision (f), with the addition of a provision for publishing notice of intended meetings of the board following its initial meeting.

Subdivision (g) has been divided into three parts:

Subdivision (g)(1) is concerned with the actions to be taken by the board on its own motion -- the opening portion is drawn from existing subdivision (1) with slight modifications.

Subdivision (g)(1), pars. a through c and f, are taken from existing subdivision (3).

Subdivision (g)(1), par. d, is taken from existing subdivision (1).

Subdivision (g)(1), par. e, has been inserted to make plain how the board takes official action when it acts on its own motion.

Subdivision (g)(2) is concerned with the actions to be taken by the board in hearing appeals.

Subdivision (g)(2), par. a, is taken from existing subdivision (2).

Subdivision (g)(2), par. b, has been added to parallel the provisions of existing § 105-329 which concerns appeals to the State Board of Assessment.

Subdivision (g)(2), par. c, has been added to make plain how the board is to proceed to hear appeals.

Subdivision (g)(2), par. d, is drawn from existing subdivision (5), with the addition of a penalty for failure to honor a board's subpoena parallel to that found in new § 105-289(d) with regard to the State Board of Assessment. The existing statute is silent as to enforcement of the board's subpoena.

Subdivision (g)(2), par. e, has been added to make plain how the board takes official action when it decides an appeal.

Subdivision (g)(3) is drawn from existing subdivision (4).

§ 105-323. Giving effect to decisions of the board of equalization and review.

Source: § 105-328

Comment: The new draft makes no substantive change in the existing section. To make specific the requirement of the existing statute, however, a form has been inserted to be used by the board of equalization and review in certifying the tax records.

§ 105-324. Appeals to State Board of Assessment from listing and valuation decisions of boards of equalization and review and boards of county commissioners.

Sources: §§ 105-329, -275(3)

Comment: Existing §§ 105-329, 105-331(h), and 105-275(3) all deal with appeals to the State Board of Assessment from listing and valuation decisions of boards of equalization and review or boards of county commis-

sioners. New § 105-290(b) deals with the procedures to be followed when such appeals reach the State Board of Assessment. New § 105-317(c) and new § 105-290(c) deal with appeals from the adoption of standards, rules, and schedules for the appraisal of real property in octennial years. Thus, new § 105-324 is designed to cover only those provisions that are concerned with the rights of appeal from local board listing and valuation decisions at the local level.

Existing § 105-329 is restricted in application to appeals from decisions of the board of equalization and review, while appeals from decisions of the board of county commissioners are dealt with by a passing reference in existing § 105-275(3). The new section spells out the procedure for appeals in both instances and thereby fills a gap with regard to appeals from boards of county commissioners.

Three substantive changes have been made in the section: (1) Any member of the board of equalization and review is permitted to appeal a decision of that board. In the existing section the right of appeal is limited to taxpayers and members of the board of county commissioners. Since the members of the board of equalization and review are ordinarily members of the board of county commissioners, the change will have substantive effect in only those counties which, by special act, have boards of equalization and review composed of persons other than county commissioners. (2) The provision permitting an appellant to wait ten days after filing notice of appeal with the clerk of the board of county commissioners before filing notice of appeal with the State Board of Assessment has been deleted. The new draft requires that both notices be filed at the same time. This is intended to reduce the possibility of frivolous appeals. (3) The time within which an appeal

may be taken from a decision of the board of equalization and review to the State Board of Assessment has been changed to conform to the time allowed in taking an appeal from the board of county commissioners, i.e., sixty days from the decision date rather than from the date of the board's adjournment. This was done for purposes of uniformity and to eliminate the possibility of having appeals delayed unnecessarily.

§ 105-325. Powers of board of county commissioners to change abstracts and tax records after board of equalization and review has adjourned.

Source: § 105-330

Comment: The new draft makes changes in the form and language of existing § 105-330 for purpose of clarification. Minor substantive changes are noted below.

Subdivision (a) is drawn from existing § 105-330 and the numbered paragraphs thereof.

(a)(1) is taken from existing § 105-330(1).

(a)(2) is taken from existing § 105-330(2).

(a)(3) is taken from existing § 105-330(3) with the addition in (a)(3)a of a statement of the legal effect of changes made by the board of county commissioners and of a statement that the section is not to be construed as a limitation on the discovery statute, new § 105-312.

(a)(4) is taken from existing § 105-330(4) but is modified to take into account the redefinition of "discovered property" provided in new § 105-312.

(a)(5) is taken from existing § 105-330(5).

(a)(6) is taken from existing § 105-330(6) with the addition of a provision that the commissioners' authority to change an appraisal is limited to that on which a tax is based for the calendar year in which the board's action is taken. Subdivision (a)(6)c has been inserted to provide for treating as discoveries reappraisals by virtue of the taxpayer's understatement of value, quantity, or other measurement.

Subdivision (b) is taken from the first clause of the single sentence in existing § 105-330(7).

Subdivision (c) has been added to make explicit what is implicit in the existing law.

§ 105-326. Listing property for city and town taxation; duty of owner; authority of governing body to obtain lists from county.

Sources: §§ 105-332, -333

Comment: Existing § 105-332 is not clear. It seems to state that if property is listed anywhere in the state it is thereby validly listed in the taxing unit in which it should be listed. If this is a correct interpretation of the existing language, it conflicts with all other provisions of the Machinery Act concerning listing. Thus, the new draft is designed to restate what has heretofore been considered as the requirement for listing in cities and towns.

New § 105-326(a) requires owners of municipally taxable property to list it for municipal taxation, but in line with existing § 105-333, the municipality is authorized to relieve owners of having to list by simply copying (i.e. "obtaining") lists of property taxable in the municipality from the county listing records.

Subdivision (b) is drawn from the second paragraph of existing § 105-333. The new draft explicitly states that the provisions of new § 105-312 concerning discoveries apply to cities and towns, whether or not they obtain their lists from the county abstracts. This writes into the statute what has been the Attorney General's consistent interpretation of the existing law.

§ 105-327. Appraisal and assessment of property subject to city and town taxation.

Source: § 105-333

Comment: This section is taken from the second paragraph of existing § 105-333 without change.

§ 105-328. Listing, appraisal, and assessment of property subject to taxation by cities and towns situated in more than one county.

Source: § 105-334

Comment: Existing § 105-334 was considered to be too stringent by Rocky Mount, the one large city lying in more than one county, and in 1961 that city was removed from its application. This fact suggested the need for a more flexible statute.

Under new § 105-328(b) the procedure provided in existing § 105-334 is retained as an option, but new § 105-328(a) allows a city situated in more than one county to adopt the valuations fixed by the counties in which it lies if their adoption will not produce a lack of uniformity in assessments throughout the city.

In subdivision (b)(1) the term provided for a municipal tax supervisor is set at two years rather than at six years, the term provided

for county tax supervisors by new § 105-294(a), and requires that the appointee's qualifications must be certified by the State Board of Assessment.

§§ 105-329 through -332, inclusive. Reserved for future codification purposes.

§§ 105-333 through -344, inclusive. Public Service Companies.

Sources: §§ 105-350 through -371, inclusive

Comment: These sections have been completely rewritten. No explanatory comment is given because the text of the statutes is self-explanatory.

§ 105-345. Poll or capitation tax.

Source: § 105-341

Comment: Provisions dealing with the poll tax have been removed from the Machinery Act articles concerned with collection and placed in a separate article. The poll tax provisions merit separate treatment and may be deleted easily when the constitutional amendment abolishing the poll tax becomes effective in 1973.

The new drafts of subdivisions (a) and (b) include the limitations contained in Article V of the Constitution concerning a maximum tax of one dollar for cities and towns and a maximum of 25% of the proceeds of the county tax to be applied to the public school fund and for the poor.

The new draft of subdivision (c) requires that polls be listed for taxation in the manner personal property is listed. (The present section does not expressly provide for a listing procedure.)

The new draft of subdivision (d) provides that the late listing penalty of new § 105-308 and the provisions of new § 105-312 for discovered property shall apply to late listed and discovered polls. In addition, provision is made for computing the penalty for a discovered poll in the event there are no taxes due on discovered property. The penalty is \$1 for the first year in which the poll was not listed plus an additional \$1 for each of the subsequent listing periods in which the poll was not listed; the total tax plus penalties is to be shown on a single receipt and shall be deemed the poll tax due for the fiscal year beginning on July 1 of the calendar year in which the poll was discovered. (This follows the pattern established in § 105-312 for discovered property.)

§ 105-346. Certain veterans exempted from poll tax.

Sources: §§ 105-342, -343, 165-44; Title 38 USCA § 101

Comment: The new draft combines §§ 105-342 and 105-343 and places them in the Machinery Act article dealing with poll tax where they logically fit. The rewritten draft states that certain veterans shall be exempted from the poll tax rather than simply providing a presumption that they are infirm. The coverage of World War I veterans has been deleted as obsolete, and coverage of Viet Nam veterans has been added.

The new draft states the fact of exemption rather than leaving it to the discretion of the county commissioners because this is thought to be the intent of the original act and because the latter provision likely would violate the "equal protection clause" of the federal constitution.

Since all World War I veterans necessarily are over fifty years of age and would not be subject to the poll tax, there is no provision made for them in subsection (c). The closing date of the Korean Conflict has been changed from July 23, 1953, to comply with the U. S. Code's (Title 38, § 101) definition of the Korean Conflict and with the date given in G.S. 165-44.

§ 105-347. Levy of property taxes.

Source: § 105-339

Comment: The new draft permits the date of the tax levy to be set by the County and Municipal Fiscal Control Acts or by other specific statutory provisions. In the absence of such provisions, the latest date on which the levy may be made is August 1 (rather than Wednesday after the third Monday in August). By referring to other statutory provisions for the date of levy, the need to amend this section every time the Fiscal Control Acts or other applicable statutes are amended is removed. The levy should be made no later than August 1 because at least a month is required for preparation and mailing of the tax notices or bills before the first day of September, the due date set in new § 105-360.

§ 105-348. All interested persons charged with notice of taxes.

Source: § 105-377

Comment: To emphasize its importance, this section has been moved to the first part of the subchapter dealing with collection. It has not been altered.

§ 105-349. Appointment, term, qualifications, and bond of tax collectors and deputies.

Sources: §§ 105-373, -374.1

Comment: The new draft broadens this section to include county, as well as municipal, tax collectors. Each unit governing body is permitted to establish the term of office and compensation of its tax collector. Provisions elsewhere in the Machinery Act relating to the sheriff as county tax collector have been deleted, and provisions for compensating the sheriff or any other official collecting taxes on a fee or commission basis have also been deleted.

Subdivision (b) makes explicit the requirement that the tax collector give a faithful performance bond. (This is implicit in the provisions of existing § 105-390.)

Subdivision (e) retains the provision for imposing the duties of tax collector upon another county or municipal official, so that a county wishing to do so may still designate the sheriff as tax collector.

Subdivision (f) is existing § 105-374.1. It seems appropriate to include it in the general section dealing with the office of tax collector.

§ 105-350. General duties of tax collectors.

Source: § 105-375

Comment: For clarity, the duties of the tax collector have been listed in numerical order, and where specific duties are prescribed in other statutes, those statutes have been cited. The section is unchanged.

§ 105-351. Authority of successor collector.

Source: § 105-375

Comment: This section is the last paragraph of existing § 105-375.

It seems to belong elsewhere than in the section describing the duties of the tax collector, thus it has been placed in a separate section.

§ 105-352. Delivery of tax receipts to tax collector; prerequisites; procedure upon default.

Source: § 105-379

Comment: The four items in existing § 105-379(b) that deal with the duties of the chief accounting officer and the criminal penalties of existing § 105-379(d) applicable to the chief accounting officer have been transferred to new § 105-359.

In new subdivision (c) the phrase "not connected with the regular collector" and the provision for allowing the special collector 2% of his collections as compensation have been deleted because they are deemed to be obsolete.

In new subdivision (d) the phrase "amount of taxes due by said collector" has been changed to "amount of taxes charged against the tax collector for which he has not made satisfactory settlement." The change in language is intended to clarify the extent of the liability imposed upon members of the governing body; there is no change in substance.

§ 105-353. Place for collection of taxes.

Source: § 105-384

Comment: The new draft differs from existing § 105-384 in three ways. First, the specific time limit on giving notice has been deleted and the phrase "timely notice" substituted. Second, notice of different collection places is required both in a newspaper and by posting. Third, the newspaper need not be published in the county but should have general circulation there.

§ 105-354. Collections for districts and other units of local government.

Source: § 105-374

Comment: The reference to sheriffs has been deleted, and the section has been broadened to cover any taxing unit's collections of the taxes of districts or other local governmental units.

§ 105-355. Creation of tax lien; date as of which lien attaches.

Sources: §§ 105-340, 301(h), -301(i)

Comment: New § 105-355 corrects a serious ambiguity in existing § 105-340's statement that the tax lien attaches "to all real property." Added to the new draft are special provisions relating to the tax lien that appear in existing § 105-301 which deals with listing. Finally, the

provisions of existing § 105-340(b) covering the lien on a merchant's stock of goods have been deleted.

Subdivision (a) of the new draft makes it clear that only the taxpayer's personal property taxes, poll tax, and the taxes imposed on a particular parcel of real property become a lien on that parcel. Also, the subdivision emphasizes the lien's attachment to real property on the first day of the listing period rather than on the date when it was actually listed.

Subdivisions (a)(1) and (a)(2), which contain provisions more related to this section than to existing § 105-301 (where presently located), have been changed slightly in content. (a)(1) makes it clear that the lien shall attach to both the life estate and the remainder so that both will be subject to foreclosure. (a)(2) is broadened so that the lien for taxes on separately owned improvements or rights also attaches to the underlying land whether or not the land and the improvements or rights were listed separately.

The special rule for the attachment of a lien to a merchant's stock of goods in existing § 105-340(b) has been deleted because of its inconsistency with the general policy against liens following personal property, because there is no clear method prescribed for its enforcement, and because § 105-366 is adequate without this lien. Also, the new draft makes plain the fact that taxes on both real and personal property become a lien on personal property seized by levy or garnishment.

§ 105-356. Priority of tax liens.

Source: § 105-376

Comment: In the new draft the section has been reorganized: the provisions relating to release of the tax lien from separate parcels of realty and preference of the lien in debtors' estates have been transferred to new §§ 105-362 and 105-365. § 105-355 that deals with attachment of the lien has been cited where appropriate. The substance of this section remains unchanged.

§ 105-357. Payment of taxes.

Source: § 105-382.

Comment: The new draft contains an enlarged list of items which the collector may not accept in payment of taxes. In the event a check accepted in payment of taxes is returned unpaid, the draft specifically requires notice to the taxpayer to return the paid receipt.

Subdivision (a) expands the list of items that may not be accepted in payment of taxes to include the notes of persons other than the taxpayer, deeds to real property, and payments in kind.

Subdivision (b) directs the collector to give written notice to the taxpayer whose check "bounced" that he should return his tax receipt. This requirement is coordinated with subdivision (b)(1) so that a purchaser or lienholder acquiring his rights after examining the taxpayer's receipt has rights superior to the taxing unit's only if the acquisition is prior to the notification.

§ 105-358. Partial payments.

Source: § 105-381

Comment: The new draft contains two changes. The phrase "at any time" found in existing § 105-381 has been deleted so that there will be no question that partial payments are governed by the rules for prepayments where applicable and thus may not be received by the collector "at any time." The last sentence in the new draft permits, but does not require, the governing board to prescribe a minimum prepayment.

§ 105-359. Prepayments.

Sources: §§ 105-378, -379(b), -379(d)

Comment: New § 105-359 combines with existing § 105-378 the provisions of existing § 105-379 that cover the chief accounting officer's duties relating to prepayments, thereby consolidating the major provisions on that topic in one section. The new draft is subdivided for easier reference.

Subdivision (a) contains a slight change of content: it directs that prepayments be made to the regular tax collector unless another person is designated (existing law requires the governing board each year to designate the official to receive prepayments).

Subdivision (e) is drawn from subdivision (b) of existing § 105-379 with slight modifications of form. The penalty provision comes from subdivision (d) of existing § 105-379.

§ 105-360. Due date; interest for nonpayment of taxes; discounts for prepayment.

Source: § 105-345.

Comment: The new draft changes the due date of taxes, eliminates the necessity of giving discounts for prepayment, advances the date on which interest for late payment begins, and increases the rate of interest.

In subdivision (a) the due date has been advanced from the first Monday in October to the first day of September to make it possible to use collection remedies (levy, garnishment, and lien sale) earlier and thereby contribute to a primary objective of the revised Machinery Act that, insofar as possible, the tax collection cycle should be completed in the fiscal year for which the taxes are levied.

The initial date for accrual of interest for nonpayment has been advanced from February 2 to January 1; the rate has been changed to 2% on January 1 plus an additional 1% to be added on the first day of February and each subsequent month until paid. This will mean a total of 13% in the first year and 12% in each year thereafter.

Subdivision (b) is drawn from existing § 105-345(a)(7), but, adhering to the provisions of § 165-44, has been expanded to cover veterans of Korea and Viet Nam.

Subdivision (c) is drawn from existing § 105-345(b) and supplants the general statewide schedule of discounts for prepayment. The new draft makes it plain that the State Board of Assessment is to review both the schedule of discount rates and the periods in which they are to be allowed. Discounts for payments made after the due date have been disallowed.

§ 105-361. Statement of amount of taxes due.

Source: § 105-383

Comment: The major change in the new draft is the addition of material in subdivisions (b) and (d) setting out the legal consequences of written and oral statements made by the tax collector about the amount of taxes due. The entire section has been subdivided for easier reference.

In subdivision (a) the phrase "special assessments" replaces "assessments" to clarify the intended meaning. The provision of existing § 105-383 that a certificate of taxes need be furnished only "if such amount has been definitely determined" has been deleted since its purpose is covered by the requirement that the taxes be in the collector's hands for collection. Also, the new draft directs that the certificate contain a statement of the amount of taxes made a lien on the parcel rather than of the taxes levied on it. Since personal property taxes are a lien on a taxpayer's real property even though not levied thereon, the amount of the lien is the figure that is likely to be of interest to a person seeking a certificate.

Subdivision (b) contains material not found in existing § 105-383. It makes clear the limited circumstances in which a certificate issued under this section has legal effect. Further, it emphasizes the continuing responsibility of the collector to the taxing unit for the consequences of an inaccurate certificate.

Subdivision (c) varies from existing § 105-383 only in that it spells out the type of proceeding by which one failing to obtain a certificate may hold the collector liable.

Subdivision (d) contains material not in existing § 105-383. It clearly states the legal ineffectiveness of an oral statement concerning taxes due. This is placed in the statute to fill a troublesome gap in the existing law.

§ 105-362. Discharge of lien on real property.

Source: § 105-376

Comment: The new draft makes existing § 105-376(b) into a separate section. For clarity, the section has been subdivided and some of the language has been changed, but its substance is unchanged.

§ 105-363. Remedies of cotenants and joint owners of real property.

Source: § 105-411.

Comment: This section has been taken from Article 31 of Chapter 105 and placed in the Machinery Act. In the new draft obsolete references to redemption have been deleted, and the section has been rearranged and paragraphed. The section has not been made applicable to real property owned by a partnership because the inclusion of copartners within the scope of the statute would be inconsistent with new § 105-366(b)(8) and general principles of partnership law.

§ 105-364. Collection of taxes outside the taxing unit.

Source: § 105-386

Comment: The substantive differences between new § 105-364 and existing § 105-386 are (1) a provision for liability for inaction on the part of the "foreign" collector and (2) a requirement of a second report by the "foreign" collector in cases in which he first reports that he is proceeding to collect. The section has been subdivided for easier reference.

In subdivisions (a) and (b) the word "personal" has been added before "property" to recall the point that the "foreign" collector can proceed against personal property but not against realty.

In subdivision (c) the term "tax receipt" has been substituted for the less accurate term "tax list." In subdivision (c)(1) an added clause emphasizes the fact that the 10% fee belongs to the collector and not to the taxing unit.

Immediately preceding (1) in subdivision (c), a requirement has been added that the "foreign" collector, in cases in which he has first reported that he was proceeding to collect, make a second report within ninety days stating either that he has been unable to effect the collection or that he has collected. This, together with the new provision of subdivision (d) holding him liable for failure to make this second report, fills loopholes in the action required of the tax collector to whom receipts are certified for collection.

§ 105-365. Preference accorded taxes in liquidation of debtors' estates.

Source: § 105-376

Comment: The new draft makes existing § 105-376(d) into a separate section. The final clause of the last sentence is intended to insure that a collector, by making a claim for taxes in a receivership, will not be held to have elected to proceed under this section and thereby be foreclosed from proceeding under new § 105-366.

§ 105-366. Remedies against personal property.

Source: § 105-385.

Comment: Substantial changes have been made in the new draft of this section. New § 105-366 deals with the general authority to proceed against personal property, time limitations on remedies against personal property, and what property is subject to levy and attachment and garnishment. The actual procedures for levy and attachment and garnishment are dealt with in new §§ 105-367 and 105-368, respectively.

In the draft of subdivision (a), the following provision regarding time limitations contained in present § 105-385(b) has been deleted as unnecessary: "this shall not be construed as prohibiting proceedings against personal property after said sale [of the tax liens]."

In subdivision (b)(2) the term "relative" has been defined. In subdivision (b)(3), a provision has been added to make it clear that by filing a tax claim in a receivership proceeding a tax collector does not cut off his right

to use the remedies of levy or attachment. Subdivision (b)(5) has been altered to conform it with the new draft of (d)(3), which provides that the collector may use either levy or attachment against the purchaser or transferee of the goods and that he has up to six months, rather than sixty days, in which to use the remedies. Several new categories of property have been made subject to levy or attachment: Subdivision (b)(6) permits property of the taxpayer that has been repossessed to be reached. Subdivision (b)(7) has been added at this point to align new § 105-366 with new § 105-368, the attachment and garnishment procedure statute; no substantive change has been effected thereby. Subdivision (b)(8) has been added in an effort to dispel confusion over the meaning of existing § 105-320. That section states that each partner is liable for the entire amount of taxes levied on the partnership property, yet nowhere in the existing Machinery Act is there any indication of how this liability is to be enforced. The lien of taxes on partnership property apparently does not attach to real property owned by individual partners; the tax collector is not authorized to proceed by way of a civil action against individual partners to enforce a personal liability for payment of taxes on partnership property; and the collector is not authorized to proceed against personal property of individual partners for enforcement of taxes on partnership property. New § 105-366(b)(8) makes it clear that the tax collector may use the remedies of levy or attachment against personal property of individual partners to enforce collection of taxes on partnership property after he has exhausted his remedies against the partnership property.

In subdivision (c), in cases in which he may use levy before the due date, the tax collector is also authorized to use attachment and garnishment.

Subdivision (d) now contains all of the provisions concerned with remedies against sellers and purchasers of the stock of goods or fixtures of wholesale

or retail merchants. The events that trigger the use of these remedies are described as existing whenever "any wholesale or retail merchant (as defined in Schedule E of the Revenue Act) . . . sells or transfers the major part of his stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business," language derived from § 25-6-102, the "bulk transfer" definition of the Uniform Commercial Code. In (d)(1)a the merchant is required to report the pending sale, transfer, or termination forty-eight hours prior to the date thereof, rather than within thirty days after the event. The personal liability for payment of the taxes imposed upon the purchaser of the stock of goods or fixtures or successor in business by existing § 105-385(g) has been transferred to (d)(2). Subdivision (d)(3) authorizes the tax collector to use attachment and garnishment as well as levy against sellers or purchasers of the stock of goods or fixtures of a wholesale or retail merchant to enforce collection of the taxes thereon. The tax collector is permitted to use these remedies against property of the purchaser at any time within six months of the transfer or termination rather than within sixty days thereof.

§ 105-367. Procedure for levy.

Source: § 105-385(c).

Comment: For purposes of clarity and organizational symmetry the provisions dealing with procedures for levy have been placed in a separate section. In new § 105-367 the tax collector is permitted to advertise the sale under levy in any manner and for any period of time he deems reasonable. This introduces an element of flexibility into the sale procedures that tax collectors believe will enhance the likelihood that the property levied upon will be sold at or near its actual value.

§ 105-368. Procedure for attachment and garnishment.

Source: § 105-385(d), (e), and (f).

Comment: The attachment and garnishment provisions of existing § 105-385 have been completely overhauled and placed in a separate section. In the new draft the attachment and garnishment procedures have been modeled on those available to the Commissioner of Revenue under § 105-242. The new procedures eliminate the necessity for the tax collector's having to apply to a court and obtain a judgment before attaching or garnishing the property. He will now serve notice of the attachment or garnishment by registered or certified mail on both the taxpayer and garnishee, and resort to the courts need only be had when either the taxpayer or garnishee asserts a defense to the garnishment which the tax collector does not allow. The keystone of this procedure is that when the garnishee responds to the notice of garnishment by forwarding the sum requested to the tax collector he is thereafter completely released from any obligation or liability for that amount to the taxpayer.

§ 105-369. Sale of tax liens on real property for failure to pay taxes.

Source: § 105-387

Comment: Under the new draft the tax collector is to make his report of delinquent taxes constituting liens on real property in February rather than in April, and the lien sales may be held in March or in any of the three succeeding months rather than in May or in any of the four succeeding months. The earlier dates are made possible in part by the September due date provided in new § 105-360(a) and are in furtherance of the policy of completing the collection cycle in the fiscal year for which the taxes

are levied. The report is to state the total amount of unpaid taxes for the current fiscal year that are liens on real property rather than the names of all taxpayers owing taxes that are liens on real property.

In subdivision (d) a provision has been added requiring that the final newspaper publication be not less than five days before the sale. The list of liens to be sold may be divided and published in more than one newspaper of general circulation in the taxing unit if notice of that fact appears in each insertion. See subdivision (e)(8).

In subdivision (e) many of the requirements relating to the manner of sale are placed in the notice and advertisement, and subdivision (f) states that the sale is to be held in accordance with the terms of the advertisement.

Subdivision (f) permits the collector, in his discretion, to sell separately the tax lien on each of several parcels belonging to the same taxpayer. This replaces the requirement of the existing law, that is, that liens against all parcels of a single owner be sold as a lot.

§ 105-370. Evidence of purchase of tax lien.

Source: § 105-388.

Comment: New § 105-370 is designed to focus primary attention on the usual practice of purchase of the tax lien by the taxing unit. Interest on the tax liens has been increased from 6% to 12% to bring it more into line with the realities of contemporary economic conditions.

If the lien is purchased by the taxing unit and no certificate is issued, the tax collector is directed to stamp the date of the sale as well as the name of the taxing unit on the tax receipt. This is to facilitate the computation of interest at a later date.

In subdivision (b), when a certificate is issued to a private purchaser the tax collector is directed to stamp or mark the tax receipt "paid" and retain it in the tax books. The substance of the tax lien certificate is unchanged.

§ 105-371. Rights of private holder of tax sale certificate.

Source: § 105-388

Comment: The provisions concerning the rights of a private holder of a tax lien sale certificate have been removed from existing § 105-388(a) and placed in a separate section. As in the new draft of § 105-370, interest on the certificates has been increased from 6% to 12%; no other substantive changes have been made.

§ 105-372. Assignment of tax liens by taxing unit after lien sale.

Source: § 105-389.

Comment: In the new draft the procedures for assignment of the tax lien are expressed in greater detail than in existing § 105-389, and confusion over the proper procedure to follow when the taxpayer himself purchases the lien has been dispelled. No substantive changes have been made.

Subdivision (a) provides that when the tax lien is assigned to anyone other than the taxpayer a lien certificate must be made out and assigned to him. If the lien is assigned to the property owner and no certificate

had previously been made out to the taxing unit, then it is only necessary to issue to him the tax receipt marked "paid," along with a receipt for the amount actually paid to release the lien.

Subdivision (b) specifies in detail the procedures to be followed in releasing the lien on one of several parcels of real property belonging to the same taxpayer.

§ 105-373. Settlements.

Source: § 105-390

Comment: Generally, new § 105-373 makes language changes to clarify the statute and to conform the section to other new sections.

In subdivision (a)(3) the tax collector is directed to make his annual settlement on the first Monday in July, thus fixing a certain date for all settlements, regardless of when the lien sale is held, and requiring the settlement to be made shortly after the close of the fiscal year for which the taxes were levied. This also conforms to the lien sale date provision in new § 105-369.

In subdivision (g) the governing bodies of all taxing units, rather than counties alone, may relieve the tax collector of taxes that are five or more years past due and are owed by insolvents.

§ 105-374. Foreclosure of tax lien by action in nature of action to
foreclose a mortgage.

Source: § 105-391.

Comment: In the new draft some rearrangement has been made of the subdivisions, and some language changes have been made for clarity and to conform the section with the new rules of civil procedure and the district court system.

Former subdivisions (a), (b), (c), and (d) are now combined in new subdivisions (a) and (b), and the provisions of existing § 105-414 are incorporated therein. In conformity with existing § 105-414, the six-months time limitation on bringing the foreclosure action has been removed with regard to taxing units but retained with regard to private purchasers of lien certificates.

Subdivision (f) permits the liens on all the parcels of property owned by the same taxpayer to be joined in one foreclosure action, but it does not require that they be so joined.

Provisions for the purchase of property at the foreclosure sale by a taxing unit (and its subsequent resale) contained in existing subdivisions (u) and (v) have been placed in new § 105-375.

§ 105-375. In rem method of foreclosure.

Source: § 105-392.

Comment: In the new draft this section has been rearranged, and some language changes have been made for clarity. All statements of policy concerning the nature and use of the in rem procedure have been grouped together in subdivision (a).

In subdivision (b) the provision for charging a docketing and indexing fee of fifty cents has been deleted. The applicable fees are contained in the general schedule of fees to be charged by the clerks of superior court as provided in § 7A-308.

Subdivision (e) expressly provides that if the lien for special assessments is being foreclosed the six-months waiting period is inapplicable. The purpose of this provision is to dispel confusion about the time at which the lien for delinquent special assessments may be foreclosed under this section; there are no sales of special assessment liens.

Subdivision (f) provides that the motion to set aside the judgment is to be made before the clerk of the superior court.

In subdivision (g) cancellation of the judgment is to be performed by the tax collector rather than by the clerk of the superior court. This conforms with the new statutory provisions dealing with the clerk's office and with instructions from the Administrative Office of the Courts.

Subdivision (i) permits execution of the judgment at the request of the tax collector rather than of the governing body of the taxing unit. It should be noted that, as provided in subdivision (b), the certificate may only be docketed at the direction of the governing body.

Subdivision (j) is new. It acknowledges that the assistance of an attorney may be necessary in foreclosing under this section but provides that his fee shall not be included in the judgment.

Subdivision (m) provides that its provisions shall not become applicable unless the section has been declared unconstitutional by the Supreme Court of North Carolina, a three-judge District Court, the United States Circuit Court of Appeals, or the United States Supreme Court. The time

during which taxing units may bring actions under § 105-374 has been extended from one year to five years from the date of any decision declaring this section unconstitutional.

§ 105-376. Taxing unit as purchaser at foreclosure sale; payment of purchase price; resale of property acquired by taxing unit.

Sources: §§ 105-391 (u) and (v), -392 (g).

Comment: In the new draft the provisions dealing with a taxing unit's purchase of property at a foreclosure sale and its subsequent resale have been placed in a separate section and made applicable to both §§ 105-374 and -375. No substantive changes have been made.

§ 105-377. Time for contesting validity of tax foreclosure title.

Source: § 105-393.

Comment: This section is retained as it appears in the present Machinery Act.

§ 105-378. Limitation on use of remedies.

Sources: §§ 105-422, -423.1

Comment: All counties and municipalities are brought within the ten-year statute of limitations as of July 1, 1972. Thus, the provisions of § 105-423.1 (insofar as they differ from this section) become inoperative as of that date. Counties and municipalities presently governed by different statutes of limitations (or by none at all) will have until July 1, 1972, to initiate action to enforce any claims for taxes that are more than ten years past due as of that date. Thereafter, all taxing units will come under the ten-year statute.

§ 105-379. Restriction on use of injunction and claim and delivery.

Source: § 105-406

Comment: This section has been taken from the first part of existing § 105-406, presently found in Article 30 of Chapter 105, and placed in the Machinery Act. Existing § 105-406 deals with two different matters: (1) restricting the use of injunction and claim and delivery and (2) procedures for obtaining refunds of taxes. These two separate items have now been placed in different sections.

The new draft divides the section into two paragraphs and makes some clarifying language changes. No substantive changes have been made.

§ 105-380. No taxes to be released.

Source: § 105-403

Comment: Existing § 105-403 is located outside the Machinery Act in Article 30 of Chapter 105. New § 105-380 places the substance of the section in the Machinery Act. For clarity, the section has been divided into four paragraphs, and some of the language has been changed to make it more precise. There is no change in substance.

§ 105-381. Taxpayer's remedies.

Source: § 105-406

Comment: This section has been taken from the second part of existing § 105-406, presently found in Article 30 of Chapter 105, and placed in the Machinery Act. In the new draft the requirement that payment of the tax be made under protest has been deleted. The North Carolina Supreme Court, in permitting suits for refund of property taxes to be brought under § 105-267, which does not require payment under protest, has effectively rendered the payment-under-protest requirement a nullity.

The section has been paragraphed and some language changes have been made for clarity.

§ 105-382. Discretionary authority to refund taxes illegally collected.

Source: § 105-405.1

Comment: This section has been taken from Article 30 of Chapter 105 and placed in the Machinery Act. It has been divided into two paragraphs, and some of the language has been changed to emphasize that exercise of the authority granted by this statute is completely discretionary with the governing body. The only substantive change is to reduce from eight to three years the period of time in which application for refund may be honored. (Prior to 1967 the period was two years; it was extended to eight in 1967. It is felt that three years is entirely adequate and in line with comparable state and federal statutes.)

§ 105-383. Fiduciaries to pay taxes.

Source: § 105-412.

Comment: This section has been taken from Article 31 of Chapter 105 and placed in the Machinery Act. It has been paragraphed and some language changes have been made for clarity. No substantive changes have been made.

§ 105-384. Duties and liabilities of life tenant.

Source: § 105-410.

Comment: This section has been taken from Article 31 of Chapter 105 and placed in the Machinery Act. The material concerning forfeiture of the estate of a life tenant for failure to pay taxes has been deleted because it has been rendered invalid by existing §§ 105-387, -391, and -392 and the case of Crandall v. Clemmons, 222 N.C. 225, 22 S.E. 2d 448 (1942).

The section has been paragraphed, and some clarifying language changes have been made.

§ 105-385. Duty to pay taxes on real property; judicial sales; sales under powers; governmental purchasers.

Source: § 105-408

Comment: This section has been taken from Article 31 of Chapter 105 and placed in the Machinery Act. Subdivision (c) is new. It is intended to assure the payment of local property taxes and special assessments when property is purchased by the State or other governmental units. It makes the State and other governmental units liable to civil suit if the taxes are unpaid.

The section has been paragraphed and some language changes have been made for clarity.

§ 105-386. Tax paid by holder of lien; remedy.

Source: § 105-409.

Comment: This section has been taken from Article 31 of Chapter 105 and placed in the Machinery Act. The section has been reorganized and some language changes have been made for clarity. No substantive changes have been made.

§ 105-387. Sales for 1930 on dates other than first Monday in June validated.

Source: § 105-418

Comment: The existing statute is codified in Article 34 of Chapter 105. The new draft makes no changes in the section's provisions, but it has been transferred to the Machinery Act.

§ 105-388. Tax sales for 1931-32 on day other than law provides and certificates validated.

Source: § 105-419

Comment: The existing statute is codified in Article 34 of Chapter 105. The new draft makes no changes in the section's provisions, but it has been transferred to the Machinery Act.

§ 105-389. Tax sales for 1933-34 and certificates validated.

Source: § 105-420

Comment: The existing statute is codified in Article 34 of Chapter 105. The new draft makes no changes in the section's provisions, but it has been transferred to the Machinery Act.

§ 105-390. Notices of sale for taxes by publication validated.

Source: § 105-421

Comment: The existing statute is codified in Article 34 of Chapter 105; the new version has been transferred to the Machinery Act. This statute was enacted as Chapter 128 of the Public Laws of 1937 and was not intended to have prospective application, thus new § 105-390 is limited in application to notices published prior to the effective date of the 1937 act.

§ 105-391. Validation of sales and resales held pursuant to § 105-391.

Source: § 105-391.1.

Comment: This statute was enacted as section 2 of Chapter 1036, Session Laws of 1951 and, by its terms, was not intended to have prospective application. Thus, the new version limits the statute's application to sales held prior to the effective date of the 1951 act.

§ 105-392. Validation of reconveyances of tax foreclosed property by county boards of commissioners.

Source: § 105-391.2

Comment: This statute was enacted as section 2 of Chapter 300, Session Laws of 1951 and, by its terms, was not intended to have prospective application. Thus, the new version limits the statute's application to conveyances made prior to the effective date of the 1951 act.

§ 105-393. Real property listings validated.

Source: § 105-398.

Comment: At the present time this statute is codified in Article 29 of Chapter 105. The new draft makes no changes in the section's provisions, but it has been transferred to the Machinery Act.

§ 105-394. Immaterial irregularities.

Source: § 105-397.1

Comment: In new § 105-394 the enumerated items are termed examples of immaterial irregularities rather than an inclusive list of such irregularities. This change does not affect the scope of the section because subdivision (11), which is taken from existing § 105-397.1, covers any immaterial irregularities not named.

The prefatory language in the first part of the statute has been rewritten and simplified for clarity; its substance is unchanged. The examples of immaterial irregularities have been placed in separate numbered subdivisions.

The item in existing § 105-397.1 stating that the overtaxation of persons or property is an immaterial irregularity has been deleted. The meaning of the term "overtaxation" is unclear, but if it means excessive taxation either through an improper assessment or clerical error, then the statement is incorrect. Such an irregularity is material and a ground upon which a taxpayer may seek a refund of the overpayment.

§ 105-395. Application and effective date of subchapter.

Source: § 105-395

Comment: New § 105-395 is materially different from the comparable section of the existing law because it speaks at a different time and to different needs. Subdivision (a) makes the rewritten Machinery Act (except for new § 105-378, which, as of July 1, 1972, establishes a statute of limitations) effective as of July 1, 1971.

Foreclosure actions instituted before the effective date of the new Machinery Act under existing §§ 105-391, -392, and -414 may, under the provisions of subdivision (b), be continued and completed under new §§ 105-374 and -375, which are deemed to be equivalent to the comparable existing sections.

Subdivision (c) is closely related to new § 105-272. It is designed to make the rewritten Machinery Act uniformly applicable in all counties and municipalities with the exception of the provisions on two matters: (1) selection of county and municipal tax collectors and (2) use of tax commissions and comparable agencies. The first of these exceptions is covered in subdivision (b); the second is dealt with in new § 105-300.

